88-1810

No. _____

Supreme Court, U.S.
FILED
APR 10 1989
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1988

WALTER W. STEFFEN, PETITIONER

v.

MERIDIAN LIFE INSURANCE COMPANY AND
MERIDIAN MUTUAL INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ROBERT G. BARKER
Price & Shula
301 Massachusetts Avenue
Indianapolis, Indiana 46204
(317) 633-8787

QUESTIONS PRESENTED

1. Whether the proper scope of an Age Discrimination in Employment Act ("ADEA") civil complaint includes all claims within the scope of an Equal Employment Opportunity Commission ("EEOC") investigation which could reasonably have been expected to grow out of the charge of discrimination or are the claims limited to those like or related to the allegations of the administrative charge itself.

2. Whether an ADEA complaint can include a claim for retaliatory discharge, absent a second administrative charge specifically identifying retaliation, where the retaliation occurred after the filing of an initial charge of discrimination.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	2
Statutory provisions involved	2
Statement	3
Reasons for granting the petition	11
Conclusion	27
Appendix A	1a
Appendix B	66a
Appendix C	68a
Appendix D	70a
Appendix E	83a
Appendix F	85a
Appendix G	101a
Appendix H	106a

TABLE OF AUTHORITIES

Cases

Babrocky v. Jewel Food Co., 773 F.2d 857, 864 (7th Cir. 1985) 10

Chisholm v. United States Postal Service, 665 F.2d 482, 491 (4th Cir. 1981) 15

Cobb v. Stringer, 850 F.2d 356, 359 (8th Cir. 1988) 15

EEOC v. St. Anne's Hospital, 664 F.2d 128, 131 (7th Cir. 1981) 24

Farmer v. ARA Services, Inc., 660 F.2d 1105 (6th Cir. 1981) 15

Fitch v. R. J. Reynolds Tobacco, 678 F.Supp. 1046, 1048 (S.D.N.Y. 1987) 15

Gibbs v. Pierce County Law Enforcement Support Agency, City of Tacoma, 785 F.2d 1396, 1400 (9th Cir. 1986) 16

Griffin v. Carlin, 755 F.2d 1516, 1522 (11th Cir. 1985) 16

Grimes v. Louisville & Nashville Railroad Co., 583 F.Supp. 642, 649 (S.D. Ind. 1984), aff'd without published opinion, 767 F.2d 925 (7th Cir. 1985), cert. denied, 476 U.S. 1160 (1986) 24

Gupta v. East Texas State University, 654 F.2d 411, 414 (5th Cir. 1981) 24

Harris v. Amoco Production Co., 768 F.2d 669, 684 (5th Cir. 1985) 15

Hemmige v. Chicago Public Schools, 786 F.2d 280, 283 (7th Cir. 1986) 15

Hicks v. ABT Associates, Inc., 572 F.2d 960, 966-967 (3d Cir. 1978) 15, 19

Jenkins v. Blue Cross Mutual Hospital Insurance, Inc., 538 F.2d 164, 167 (7th Cir.) (en banc) 9

Lake v. Baker, 662 F.Supp. 392, 404, n.9 (D.D.C. 1987) 16

Love v. Pullman Co., 404 U.S. 522, 527 (1972) 22

Loe v. Heckler, 768 F.2d 409, 420 (1985) 21

Mamos v. School Committee of Town of Wakefield, 553 F.Supp. 989, 992 (D.Mass. 1983) 15

Miller v. Smith, 584 F.Supp. 149, 154 (D.D.C. 1984) 16

Obradovich v. Federal Reserve Bank of New York, 569 F.Supp. 785, 789 (S.D.N.Y. 1983) 15

Reiter v. Center Consolidated School District No. 26-JT, 618 F.Supp. 1458, 1461 (D.C. Colo. 1985) 16, 20

Sanchez v. Standard Brands, Inc., 431 F.2d 455 (5th Cir. 1970) 14, 20

Smith v. American President Lines, Ltd., 571 F.2d 102, 107, n.10 (1st Cir. 1978) 15

Smith v. Sentry Insurance, 674 F.Supp. 1459, 1468 (N.D. Ga. 1987) 18

Williams v. Casey, 657 F.Supp. 921, 925 (S.D.N.Y. 1987) 15

Zipes v. Trans World Airlines, Inc., 455 U.S. 385 (1982) 22

Statutes

28 U.S.C. § 1254(1) 15

28 U.S.C. § 1331 7

29 U.S.C. § 623(a) 6

29 U.S.C. § 623(d) 7

29 U.S.C. § 626(d) 2, 8, 23

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

No. _____

WALTER W. STEFFEN, Petitioner

v.

MERIDIAN LIFE INSURANCE COMPANY AND
MERIDIAN MUTUAL INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Walter W. Steffen respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The court of appeals' decision (App., infra, 1a-38a) is reported at 859 F.2d 534.

JURISDICTION

The court of appeals' decision was entered on October 11, 1988. A petition for rehearing and suggestion for rehearing en banc was denied on January 18, 1989 (App., infra, 41a-42a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Section 7(d) of the Age Discrimination in Employment Act of 1967, as amended by the Age Discrimination in Employment Act Amendments of 1978, 29 U.S.C. § 626(d), provides in pertinent part:

> No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission.

STATEMENT

This case concerns the scope of a civil complaint after an employee has filed charges alleging unlawful discrimination with the Equal Employment Opportunity Commission ("EEOC"). The court of appeals affirmed the district court's grant of summary judgment on Petitioner Walter W. Steffen's ("Steffen") retaliatory discharge claim. The court of appeals held that Steffen's retaliatory discharge claim was not within the scope of his EEOC charges.

1. From approximately February 26, 1979 until March 31, 1983, Steffen was a Senior Vice-President in charge of the day-to-day operations of respondent, Meridian Life Insurance Company ("Meridian") (App., infra, 2a-3a). Steffen turned 65 years of age on March 12, 1983 (App., infra, 53a). On April 1, 1983, Meridian transferred all

Steffen's duties as Senior Vice President to a newly-hired, younger person (App., infra, 3a, 53a). Meridian told Steffen that on and after March 31, 1983, he could only continue his employment as an actuary (App., infra, 3a, 53a).

Unhappy with his demotion, in early May 1983, Steffen retained a private attorney to negotiate with Meridian (App., infra, 7a, 54a-56a).

On May 13, 1983, without counsel, Steffen went to the EEOC's Indianapolis District Office and met with an EEOC counselor. After Steffen detailed his situation, the EEOC counselor told him he could either file a "formal complaint," which the EEOC would immediately investigate, or he could file an informal complaint by filling out an EEOC Form 283 captioned Intake Questionnaire (App., infra,

62a). The EEOC counselor told Steffen that filing the Intake Questionnaire would protect his right to bring a claim for age discrimination if his private conciliation attempts were unsuccessful. Steffen filed the Intake Questionnaire with the EEOC and continued to negotiate, through his attorney, with Meridian, all in reliance upon the EEOC counselor's representations (App., infra, 7a-8a, 54a-56a).

By letter dated May 18, 1983, Steffen's attorney contacted Meridian's President and expressly notified him that he had "been retained by Mr. Walter Steffen to pursue a claim against Meridian Insurance under the Age Discrimination in Employment Act" (App., infra, 57a-60a). Meridian's receipt of the May 18, 1983 letter was acknowledged by a June 1, 1983 letter from Meridian's President, Steffen's immediate superior

(App., infra, 61a). Steffen's attorney negotiated with Meridian from May, 1983 into the Fall of 1983 when Meridian terminated Steffen for an alleged conflict of interest (App., infra, 54a-56a, 14a-15a).

On December 1, 1983, Steffen filed an EEOC Form 5A captioned Charge of Discrimination with the EEOC (App., infra, 63a). On December 27, 1984, Steffen filed a civil complaint against Meridian asserting three claims:

1. That Meridian violated 29 U.S.C. § 623(a) by demoting him [in April, 1983] based upon his attaining 65 years of age;
2. That Meridian violated 29 U.S.C. § 623(a) by terminating him [in November, 1983] because of his age; and

3. That Meridian violated 29 U.S.C. § 623(d) by discharging him in retaliation for exercising his ADEA rights.

(App., infra, 2a).

The district court's jurisdiction over Steffen's ADEA claims was pursuant to 28 U.S.C. § 1331.

The district court granted Meridian summary judgment on Steffen's unlawful demotion and retaliatory discharge claims (App., infra, 2a, 43a-50a). A jury trial was held on Steffen's unlawful termination claim, the jury returned a verdict of willful age discrimination against Meridian and Judgment was entered (App., infra, 51a). Meridian then filed a motion for judgment notwithstanding the verdict, which the district court granted by Entry dated December 31, 1986. An appeal followed.

2. The court of appeals decision initially reviewed the district court's grant of summary judgment on Steffen's unlawful demotion claim. It found "substantial evidence in the record" that Meridian focused on Steffen's chronological age at the time of his April, 1983 demotion (App., infra, 19a). The decision then analyzed whether Steffen's May 13, 1983 Intake Questionnaire had the effect, as a matter of law, of a 29 U.S.C. § 626(d) charge. The decision held Steffen's Intake Questionnaire did satisfy the 29 U.S.C. § 626(d) requirements and, "[a]s such, the district court improperly granted summary judgment to Meridian" (App., infra, 24a). The decision reversed the district court's summary judgment on Steffen's unlawful demotion claim and remanded the claim for further proceedings (App., infra, 37a-40a).

3. The decision next focused upon the district court's grant of summary judgment on Steffen's retaliatory discharge claim. The decision concluded, in part, that Steffen's retaliatory discharge claim was not within the scope of Steffen's December 1, 1983 charge since "[t]here is no mention of retaliation or any other words to that effect" and, therefore, affirmed the district court's grant of summary judgment (App., infra, 29a, 43a-50a). The decision utilized the scope of charge test which states "ADEA claims are cognizable in a civil action if they are 'like or reasonably related to the allegations of the charge and growing out of such allegations.' Jenkins v. Blue Cross Mutual Hospital Insurance, Inc., 538 F.2d 164, 167 (7th Cir.) (en banc) (quoting Danner v. Philips Petroleum Co., 447 F.2d 159, 162 (5th Cir. 1971)), cert.

denied, 429 U.S. 986 (1976); see also Babrocky v. Jewel Food Co., 773 F.2d 857, 864 (7th Cir. 1985)." (App., infra, 28a).

4. The decision also concluded that Steffen's retaliatory discharge claim was not within the scope of Steffen's May 13, 1983 charge even though the retaliation arose after Steffen filed his May 13, 1983 charge of discrimination. Inexplicably, the decision also concluded that in situations like Steffen's a double filing requirement would serve no purpose except to create additional procedural technicalities (App., infra, 30a-31a, n.2).

5. The court of appeals' decision next affirmed the district court's grant of judgment notwithstanding the verdict (App., infra, 37a).

6. On November 23, 1988, Steffen filed a petition for rehearing and

suggestion for rehearing en banc, which the court of appeals denied on January 18, 1989 (App., infra, 41a-42a).

REASONS FOR GRANTING THE PETITION

This case is worthy of consideration for several important reasons -- the significance of the rights protected by the ADEA and other similar federal job discrimination statutes which require workers to file EEOC charges (i.e. Title VII of the Civil Rights Act of 1964) and the great number of American workers whose ability to seek redress in federal courts hinge upon a judicial determination of the scope of their EEOC charges. Review is also warranted because the court of appeals' decision threatens to undermine important congressional policies and prior principles established by this Court.

Thousands of American workers each year find themselves in an EEOC office. Most, including Steffen, go to the EEOC knowing little or nothing about federal job discrimination laws. All they know is the EEOC is the United States Government agency which administers these laws. These American workers come to the EEOC as victims of various forms of job discrimination, are often jobless and, as such, many are emotionally devastated. They presume the EEOC counselors are knowledgeable regarding these laws. They rely upon the EEOC counselers (non-attorneys) to listen to their situation and advise them regarding their rights. What many American workers discover, often too late, is that some EEOC counselors are not knowledgeable about certain technical requirements with which the workers must comply. Many times the

documents filed with the EEOC contain alleged technical deficiencies which are first raised years later in the civil action when the employer-defendant moves for summary judgment.

One commonly alleged technical deficiency relates to the scope of an administrative charge. While at the EEOC, the worker is often unable to fully articulate his grievances since he is unaware of the panopoly of job discrimination claims which the laws have identified.

This tragic consequence befell Steffen, just as it happens to countless other American workers each year. The American worker, the federal courts and the attorneys who assist these workers need a uniform test to determine the scope of an EEOC charge.

1. For years, many federal courts would not look beyond the language of the charge itself when determining the scope of a subsequent civil action. The Fifth Circuit decision entitled Sanchez v. Standard Brands, Inc., 431 F.2d 455 (1970) was one of the first decisions to assert that the language of the administrative charge itself should not limit the scope of a subsequent civil action. Sanchez held "the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination" should determine the scope of the civil action. Id. at 466.

Since Sanchez, more and more federal courts have held that claims (ADEA, Title VII, etc.) are cognizable in a civil action if the claims were within the scope of the EEOC investigation which can reasonably be

expected to grow out of the charge of discrimination. Mamos v. School Committee of Town of Wakefield, 553 F.Supp. 989, 992 (D.Mass. 1983); Obradovich v. Federal Reserve Bank of New York, 569 F.Supp. 785, 789 (S.D.N.Y. 1983); Smith v. American President Lines, Ltd., 571 F.2d 102, 107, n.10 (1st Cir. 1978); Fitch v. R. J. Reynolds Tobacco, 678 F.Supp. 1046, 1048 (S.D.N.Y. 1987); Williams v. Casey, 657 F.Supp. 921, 925 (S.D.N.Y. 1987); Hicks v. ABT Associates, Inc., 572 F.2d 960, 966-967 (3d Cir. 1978); Chisholm v. United States Postal Service, 665 F.2d 482, 491 (4th Cir. 1981); Harris v. Amoco Production Co., 768 F.2d 669, 684 (5th Cir. 1985); Farmer v. ARA Services, Inc., 660 F.2d 1105 (6th Cir. 1981); Hemmige v. Chicago Public Schools, 786 F.2d 280, 283 (7th Cir. 1986); Cobb v. Stringer, 850 F.2d 356, 359 (8th Cir. 1988);

Gibbs v. Pierce County Law Enforcement Support Agency, City of Tacoma, 785 F.2d 1396, 1400 (9th Cir. 1986); Reiter v. Center Consolidated School District No. 26-JT, 618 F.Supp. 1458, 1461 (D.C. Colo. 1985); Griffin v. Carlin, 755 F.2d 1516, 1522 (11th Cir. 1985); Miller v. Smith, 584 F.Supp. 149, 154 (D.D.C. 1984); Lake v. Baker, 662 F.Supp. 392, 404, n.9 (D.D.C. 1987).

The court of appeals' decision did not utilize the "scope of a reasonable EEOC investigation" test to determine which claims Steffen could pursue in his district court action against Meridian. The decision restricted Steffen's claims to those "like or reasonably related to the allegations of the charge and growing out of such allegations" (App., infra, 28a). Utilizing this test, the court found "[t]here is no mention of retaliation or any words to that

effect in Steffen's December 1, 1983 charge" and, therefore, concluded Steffen's retaliatory discharge claim was not within the scope of his December, 1983 charge.

This Court must eliminate the final vestiges of this inequitable test once and for all.

Had the court of appeals utilized the "scope of a reasonable EEOC investigation" test, Steffen's claim for retaliatory discharge would have been preserved. This would only be equitable since the court of appeals admitted "[p]erhaps there was sufficient evidence to justify a finding of retaliation" (App., infra, 36a-37a).

Steffen's demotion and subsequent termination were the only employment actions at issue. They all occurred in a nine month time period. The EEOC investigation file contained Steffen's two charges. The May

1983 charge identified that an attorney was retained to protest the demotion. Once an EEOC investigator discovered Steffen was demoted in April, 1983, hired an attorney in May, 1983 and was discharged in November, 1983, the conclusion that Steffen's discharge might be in retaliation for the assertion of his ADEA rights would be unavoidable. Smith v. Sentry Insurance, 674 F.Supp. 1459, 1468 (N.D. Ga. 1987).

Some courts still apply the "like or reasonably related to the allegations of the charge" test. Some Seventh Circuit decisions and some other courts still apply the "like or reasonably related to the allegations of the charge and growing out of such allegations" test. Most courts now utilize the "scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination" test.

In applying the latter test, some courts focus upon the actual EEOC investigation which did "grow out of the charge of discrimination" while others, when there is no evidence of an EEOC investigation in the Record, look to the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination.

Determined to protect the rights of the American worker, the Third Circuit has taken the position that "[i]f the EEOC's investigation is unreasonably narrow or improperly conducted, the plaintiff should not be barred from his statutory right to a civil action." Hicks, supra, 572 F.2d at 966-967.

The confusion and need for uniformity is presented, most succinctly, by the United States District Court for the District of

Colorado when the Honorable District Court Judge Kane declared:

> "When determining the proper scope of a Title VII complaint, a court must balance two competing values. On the one hand, the purpose of the detailed procedure is 'to provide an opportunity for non-judicial and non-adversary resolution of claims' (citations omitted). On the other hand, the purpose of Title VII is to safeguard rights of persons 'untutored in the technicalities of the law and who may not . . . be able to fully articulate their grievances or be aware of the full panopoly of discriminatory practices against them . . . .' Sanchez v. Standard Brands, Inc., 431 F.2d 455, 466 (5th Cir. 1970).
>
> "In attempting to reach an accommodation between these two values, courts have offered various formulations to test the adequacy of the EEOC charge. Some courts have used a 'like or related test,' others have looked to the scope of a reasonable EEOC investigation based on the charge, and some have suggested that the two tests are the same."

Reiter, 618 F.Supp. at 1461.

A review of recent federal court decisions illustrates few courts apply these different tests in a way which achieve

similar results. The "like or related" test focuses on the words in the charge. The "scope of a reasonable EEOC investigation" test is broader and more analogous to civil notice pleading. To require laymen, unassisted by counsel, to adhere to a "fact pleading" standard undermines the congressional purposes which the job discrimination laws were established to advance.

The District of Columbia Circuit Court in Loe v. Heckler, 768 F.2d 409, 420 (1985), addressed this issue when it declared "we underscore the strictures of common law pleading have no place in a scheme largely dependent upon self-service in drawing up administrative charges."

The decision's use of the more limited "like or reasonably related to the allegations of the charge" test also

seriously undermines previous holdings by this Court. This Court has declared that federal courts should not engage in hypertechnical analyses of administrative actions which would result in a termination of an worker's legal rights when, as with ADEA and Title VII claims, they involve "a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process . . . ." Love v. Pullman Co., 404 U.S. 522, 527 (1972).

Ten years after Love, in Zipes v. Trans World Airlines, Inc., 455 U.S. 385 (1982), this Court announced "a guiding principle" for federal courts which review the technical administrative actions required by Title VII. This Court stated that a "technical reading [of a timely filing provision of Title VII] would be 'particularly inappropriate in a statutory

scheme in which laymen, unassisted by trained lawyers, initiate the process . . . .'" Id. at 397.

2. Unless overturned, the court of appeals' decision will also establish precedent for the proposition that a second charge specifically alleging retaliation is required to assert a claim for retaliation in a civil action, even though the retaliation resulted from the worker's filing a charge.

The language of the decision rejects this additional charge requirement, yet the holding establishes legal precedent for such a requirement (App., infra, 30a-31a, n.2a).

The decision concluded that Steffen's filing of the Intake Questionnaire on May 13, 1983 was, as a matter of law, a 29 U.S.C. § 626(d) charge (App., infra, 24a). There is no dispute that Steffen's November

1983 termination came after the filing of this charge. After the court of appeals made this finding and legal conclusion, it stated:

> "Steffen cites to a number of cases that have allowed a retaliatory discharge claim to proceed even though the underlying charge did not mention retaliation. See, e.g., EEOC v. St. Anne's Hospital, 664 F.2d 128, 131 (7th Cir. 1981); Gupta v. East Texas State University, 654 F.2d 411, 414 (5th Cir. 1981); Grimes v. Louisville & Nashville Railroad Co., 583 F.Supp. 642, 649 (S.D. Ind. 1984), aff'd without published opinion, 767 F.2d 925 (7th Cir. 1985), cert. denied, 476 U.S. 1160 (1986). These cases, however, all involve situations where the alleged retaliation arose after the charge of the discrimination had been filed or the employer was given clear notice from the EEOC that retaliation was issue; thus, 'a double filing . . . would serve no purpose except to create additional procedural technicalities when a single filing would comply with the intent of Title VII.' Gupta, 654 F.2d at 414 (App., infra, 30a-31a, n.2)." (original emphasis).

Inexplicably, the decision went on to conclude "[t]hese cases are distinguishable from the present case where the alleged

retaliatory acts occurred before Steffen's December 1, 1983 charge of discrimination was filed and Meridian was not given clear notice that retaliation was at issue" (original emphasis) (App., infra, 30a-31a, n.2). On page 17 of the decision, the court of appeals concluded Steffen filed a charge on May 13, 1983, but it failed to apply the same conclusion to its analysis of his retaliatory discharge claim on page 21 of its decision.

This decision establishes precedent which will require American workers who file an administrative charge and, thereafter, suffer additional employment actions, to file a second charge specifically articulating the possibility that the subsequent employment actions were retaliatory in nature and not just additional discriminatory acts.

In Steffen's case, Meridian demoted Steffen based upon his age and, after Steffen retained an attorney, Meridian terminated him. How could Steffen, his EEOC counselor or anyone have identified whether his termination by Meridian was more age discrimination or in retaliation for the assertion of his ADEA rights?

The law should not force the American worker to accurately establish the exact intent of each and every employer action.

This Court has provided uniformity and guidance on the subject of filing administrative charges, both relating to timeliness and inter-agency relationships. It is now time for this Court to provide similar guidance and uniformity on the ever-worsening "scope of charge" dilemma.

CONCLUSION

The petition for writ of certiorari should be granted. Respectfully submitted.

Robert G. Barker
PRICE & SHULA

May 1989

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 87-1059
WALTER W. STEFFEN,

Plaintiff-Appellant,

v.

MERIDIAN LIFE INSURANCE COMPANY and MERIDIAN MUTUAL INSURANCE COMPANY,

Defendants-Appellees.

Appeal from the
United States District Court
for the Southern District of Indiana,
Indianapolis Division.
No. IP84-1693C--**Sarah Evans Barker**, Judge

ARGUED OCTOBER 1, 1987 --
DECIDED OCTOBER 11, 1988

Before CUDAHY and MANION, Circuit Judges,

and WILL, Senior District Judge.*

---

* Honorable Hubert L. Will, Senior District Judge of the Northern District of Illinois, is sitting by designation.

MANION, Circuit Judge. Walter Steffen sued Meridian Mutual Insurance Company (Meridian Mutual) and its wholly-owned subsidiary, Meridian Life Insurance Company (Meridian Life), under the Age Discrimination in Employment Act (ADEA). Steffen claimed that Meridian Mutual and Meridian Life (whom we will refer to collectively as "Meridian") demoted him because of his age and then later discharged him because of his age and in retaliation for exercising his ADEA rights. The district court granted summary judgment in Meridian's favor on Steffen's discriminatory demotion and retaliatory discharge claims. Steffen's discriminatory discharge claim went to trial and a jury ruled in his favor. The district court, however, granted Meridian judgment notwithstanding the

verdict and, in the alternative, conditionally granted Meridian a new trial. Steffen appeals all three decisions of the district court. We affirm the district court's grant of summary judgment and judgment notwithstanding the verdict on the discharge claims, and reverse the district court's grant of summary judgment on the demotion claim.

I. FACTUAL BACKGROUND AND PROCEEDINGS IN DISTRICT COURT

On February 28, 1979, two weeks short of his 61st birthday, Steffen began working for Meridian at its Indianapolis, Indiana headquarters as a Senior Vice-President in charge of Meridian Life. Over the course of the next few years Steffen capably performed his job and Meridian Life enjoyed considerable success. Nonetheless, on April 1, 1983, Meridian replaced Steffen as head

of Meridian Life with a younger man, William Madren, who assumed the position of General Manager and Vice-President. Steffen continued on with the company as Senior Vice-President and was responsible for performing actuarial services.

Why Steffen was replaced as head of Meridian Life is the subject of considerable dispute. Meridian claims that Steffen's replacement was simply the result of an understanding between Steffen and Harold McCarthy, the President and Chief Executive Officer of Meridian Mutual, that Steffen was only going to work for Meridian on a short-term basis. McCarthy testified that Steffen and he had discussed Steffen's age during their initial employment discussions because McCarthy wanted to ascertain whether Steffen would be on the job long enough to direct

Meridian Life through the initial phases of its new strategies and because McCarthy did not want to mislead Steffen about Meridian's pension plan, which excluded new hires older than 59. According to McCarthy, Steffen "indicated he intended to work four or five years, which, added to age 60, came up to his 65th birthday in my mind." Thereafter, McCarthy mailed Steffen a letter stating:

> I view the broad, general assignment as being two-fold:
>
> 1. Take a leadership role in helping us move the Life operations from the plateau we now seem to be occupying to a position where we will have doubled our size and premiums in the next five years.
>
> 2. Help in locating, training and fixing in place, a successor who could continue the direction of the Life insurance operations at the increased tempo we will hope to have achieved in the next four or five years.

Steffen wrote back accepting the position.

McCarthy claimed that his understanding that Steffen would step down on his 65th birthday was reinforced during the next few years. Steffen's first evaluation dated February, 1980 stated that "[Steffen] knows he is here on a short-term basis and for a specific assignment." A 1981 file memorandum, which McCarthy testified was created cooperatively by Steffen and him, stated that in 1981 Steffen was expected to "help the President locate and hire the person we expect will head [Meridian Life] after 3/83." A January 25, 1982 performance evaluation prepared by McCarthy stated that one of Steffen's objectives at the time of being hired was to "[f]ind a successor and have him successfully functioning by March, 1983" and that "I'm sure [Steffen] hopes to continue with the company in some capacity

after age 65. We've discussed an actuarial consultant relationship which may be both a necessary and good arrangement for both of us." Steffen himself interviewed potential replacements in 1981 and 1982.

In October, 1982, Steffen interviewed William Madren, the person who turned out to be his successor. Prior to this interview, Madren and McCarthy had discussions that led to what McCarthy described as "an understanding that we wanted to be married . . . ." On October 6, 1982, McCarthy and Steffen discussed Madren and both agreed that Madren was an excellent candidate. But Steffen objected to the proposed date McCarthy set for Steffen's replacement by Madren, April 1, 1983. In an October 6, 1982 "note to file" McCarthy wrote:

> I have talked from the very beginning about the five years of Walt's efforts which would result in our having his replacement on board and functioning by the end of that time. My reference to five years was based on the fact that Walt was 60 years of age at the time he came with the Company. What I overlooked was that he was near the end of his 60th year and, for all practical purposes, was 61 years old. As a result, I was seeing 65 as the end of this time frame, and he was seeing his age 66 as the end.

Steffen testified that October 6, 1982 was the first time that he was informed that he was going to be replaced after his 65th birthday. Steffen told McCarthy that "I can't buy it." Steffen testified that he reminded McCarthy that when Steffen came to Meridian he "had accepted non-inclusion in the [Meridian] pension plan or no special arrangement because I had intended to work beyond age 65." Steffen then proposed that he be named president of Meridian Life and that Madren be employed as general manager

under Steffen until Steffen retired when he was 70. When Steffen reiterated this suggestion at a later date McCarthy stated, "That's impossible." According to Steffen, he told McCarthy to think of the situation from Steffen's perspective and McCarthy responded, "When I am 65, I'll be ready to retire."

McCarthy formally offered Madren the position as the head of Meridian Life on November 15, 1982. In a draft speech to Meridian managers, McCarthy stated that Madren was replacing Steffen "by [Steffen's] 65th birthday, which happens to be in March." A Meridian newsletter stated, "Steffen . . . will work with . . . Madren in the transfer of responsibilities until March 31, . . . Steffen's normal retirement date . . . ."

While Steffen's objection did not stop McCarthy from replacing him as the head of Meridian Life, McCarthy did not have any problems with Steffen staying on to perform actuarial duties. On October 14, 1982, McCarthy wrote Madren stating:

> One of the problems we will have is in creating the right kind of structure and environment for Walt Steffen to continue working with us. As you and I both know, we need his services. I haven't come up with a good answer yet and am depending on you to help me find the answer since you must be satisfied and comfortable with whatever solution we find.

In November, 1982, McCarthy again wrote Madren stating:

> I would like you to help me in working out the position description for Walt Steffen and the relationship the three of us will have. Your handling of this relationship will probably be one of the most important tests of your ability to surround the job and provide us with the leadership I feel you are capable of offering.

On March 31, 1983, Madren became General Manager and Vice-President for Meridian Life. Steffen continued on with Meridian Life as a Senior Vice-President performing actuarial duties. Meridian did not decrease Steffen's pay after the demotion. In fact, Steffen received a 5% pay raise. There is some dispute, however, over whether the size of his annual pay increases lessened. In any event, Steffen was not pleased with the realignment of responsibilities and contacted an attorney. His attorney informed him that under the ADEA Steffen was required to give the Equal Employment Opportunity Commission ("EEOC" or "Commission") notice of the alleged discrimination. On May 13, 1983, Steffen went to the EEOC's Indianapolis District Office. According to Steffen, an Intake

Officer told him that he could either file a "formal complaint," which the EEOC would immediately investigate, or he could file an informal complaint by filling out an Intake Questionnaire, which would protect his right to bring an ADEA action if his private conciliation attempts were unsuccessful. Steffen then filled out the Intake Questionnaire in reliance upon the representation that it would preserve his right to bring suit.

A. Steffen's Discharge

In September, 1983, Steffen left for a three-week combined business and pleasure trip to California and Hawaii. While Steffen attended the Pacific Insurance Conference in Hawaii, Daniel Lau, the President of Grand Pacific Life Insurance Company (Grand Pacific), asked him to

perform an evaluation of Grand Pacific. Steffen, who had known Lau for over twenty years, spent the next twenty-four hours deciding whether to perform the evaluation. Steffen testified that in making the decision he balanced the following four considerations: 1) he and his wife were on vacation; 2) because Meridian was interested in acquisitions, he wanted to alert Meridian to a potential acquisition in the event that Grand Pacific was up for sale; 3) because Grand Pacific had a large amount of flexible premium annuity reserves, he thought he could possibly find "some clever method they were using in developing this volume of business"; and 4) he wanted to talk with his wife about whether performing the work would be a conflict of interest with his duties at Meridian.

Meridian had a written conflict of interest policy that was distributed to its employees. The introductory provisions of this policy stated:

> The objectives of this policy are ...: [t]o emphasize the requirement to disclose actual or potential conflicts of interest;
>
> * * *
>
> No policy, however, can hope to spell out the appropriate ethical behavior for every situation confronting an employee. When in doubt as to the proper course of action, the employee should seek counsel through disclosing the circumstances in accordance with this policy.

Substantively, the policy provided:

> **DEFINITION**
>
> A "Conflict of Interest" is any circumstance that may cast doubt, or even the appearance of doubt, on an employee's ability to act with total objectivity with regard to the Company's interest.
>
> * * *
>
> **POLICY GUIDELINES**

* * *

2. While not a complete list, the following constitute reportable conflicts of interest and/or violations of this Statement when involving an employee or any relative, spouse, or spouse's relative residing in the same household as the employee:

* * *

c. Being a director, officer, partner, consultant, or performing work or services for any person or enterprise doing business with, seeking to do business with, or competing with the Company.

* * *

k. Disclosing confidential information of a technical, financial, or business nature to any individual or enterprise not authorized by the Company.

* * *

RESPONSIBILITY

* * *

Each employee is responsible for remaining familiar with this Statement of Policy, for reporting any actual or

> potential conflicts or violations of this Statement, and for seeking assistance if questions requiring guidance develop.

The next day Steffen agreed to perform the evaluation. Steffen then met with Grand Pacific officials, reviewed company documents, and wrote a report (hereinafter "the Grand Pacific report") that evaluated the company and made suggestions as to how the company could improve its performance. Steffen then met with the Grand Pacific Executive Committee and submitted the report. Although he initially did not want to accept payment for the work because Mr. Lau was a friend, Steffen agreed to accept $1500 and the payment of his hotel expenses from Grand Pacific.

Steffen returned to Indianapolis during the last week of September. Within a few days, he contacted Peter Spoolstra, an

Indianapolis actuary who did work for both Grand Pacific and Meridian Life. Steffen met with Spoolstra and gave him a copy of the Grand Pacific report.

At about the same time, Steffen and McCarthy also had a conversation concerning Steffen's trip to Hawaii. McCarthy asked Steffen why he did not submit reimbursement for his travel expenses to Hawaii. Steffen replied that he had won two tickets to the West Coast from a travel agency and then paid for the travel to Hawaii out of his own pocket pursuant to an arrangement he had with McCarthy when Steffen had traveled to Switzerland for another conference. Steffen did not mention that he had done consulting work for Grand Pacific.

McCarthy did not find out about Steffen's work for Grand Pacific until he

was told by a Meridian officer named David Scofield. Scofield had learned of Steffen's work from Spoolstra, the Indianapolis actuary to whom Steffen had given a copy of the Grand Pacific report. McCarthy then went to talk to Steffen. According to Steffen, he started to explain what he had done for Grand Pacific but McCarthy interrupted him stating, We'll see about that." McCarthy claimed a different version of events. McCarthy stated that he asked Steffen whether he had prepared a written report and that Steffen replied that he had not.

The matter was then turned over to George Buennagel, Meridian's internal auditor. Thereafter, Steffen's work for Grand Pacific became the subject of a meeting between Buennagel and Daniel Evans,

the Chairman of the Joint Audit Committee (JAC) of Meridian Life's Board of Directors. McCarthy and Meridian's internal counsel were also present at the meeting. Evans told Buennagel at that meeting to expect to prepare a report on the matter for the JAC's November 18 meeting.

On November 15, another meeting was held between Evans and Buennagel, McCarthy was also present at this meeting along with Meridian's internal and outside counsel. By this time, McCarthy had been able to obtain a copy of the Grand Pacific report. Buennagel testified that after viewing the report, "we . . . knew definitely had a conflict of interest" and that "Mr. Evans and I and other members of the discussion agreed we obviously had a significant actual conflict of interest that had not been

disclosed." According to Buennagel, Evans told him "to go ahead and perform my investigation, verify what we had determined and how it violated the policy." Buennagel further testified that Evans "wanted to know my opinion, my recommendation, my conclusions, thus generating" the report.

Buennagel then prepared a report concluding that Steffen committed three violations of the conflict of interest policy. First, the report stated that Steffen failed to disclose his relationship with an actual or potential competitor even though Steffen had three opportunities to do so. Buennagel testified that the three opportunities to disclose were at the time Grand Pacific asked Steffen to do the work, the time McCarthy asked Steffen about his expenses on the trip, and the time when

Steffen allegedly denied drafting a written report. Second, Buennagel's report stated that Steffen performed services for a competing company without Meridian's approval. These services, according to the report, included evaluating the profitability of certain products, recommending a Universal Life product similar to Meridian Life's product which Steffen had successfully developed at Meridian, recommending strategic and annual financial planning, and commenting on management structure. Buennagel's report stated that in Meridian's Legal Division's opinion "the operating territories of the two companies do not prevent the two from being competitors for growth in the national market now and that the two companies are obviously potential direct competitors in

the future." Third, the report stated that Steffen disclosed confidential Meridian information concerning the interest spread differential on Meridian's Flexible Premium Annuity Plan product, by recommending that Grand Pacific develop a Universal Life product along the lines of Meridian Life's product, and by recommending that Grand Pacific use a specific software company to automate their system. Buennagel's report concluded that the policy violations warranted disciplinary action.

Buennagel presented his report to the JAC on November 18, 1983. The six members of the JAC reviewed the report and questioned Buennagel and McCarthy. The JAC then unanimously passed a resolution finding that Steffen had previously acknowledged his duty to remain familiar with the policy and

to report any actual or potential conflict of interest, that Steffen performed consulting services for an actual or potential competitor, and that Steffen had disclosed confidential information without Meridian's approval. Finding Steffen's violation of the policy to be deceptive and material, the resolution instructed Chairman Evans to recommend to the Board of Directors that it take such disciplinary action as the Board deemed appropriate.

Evans reported the resolution and the underlying circumstances to a meeting of Meridian Life's Board of Directors. Board members then questioned McCarthy who told the Board that his relationship with Steffen had been irreparably damaged. Thereafter, as reflected in its minutes, "the Board unanimously resolved, on the basis of the

report of the Joint Audit Committee and the recommendation of [McCarthy], to accept the resignation of Mr. Steffen if offered, and if not offered . . . to terminate the employment relationship between . . . Mr. Steffen and Meridian . . . ." Steffen was then terminated.

Three Board members testified as to why they voted to terminate Steffen's employment.. One Board member testified as follows:

> Q Why did you support the action that had been proposed?
>
> A For two reasons.
>
> One, I felt that there was no reason to doubt what Mr. Evans had said, and I felt that Mr. Steffen, as the senior vice president of Meridian Life, having acted in that fashion of doing some work as a consultant or in some other capacity for a competing company, had made a serious error that was in violation of the practice and the professional statement or code of behavior.

> But in my case even more importantly in my own thinking was that Mr. Steffen, for whatever reason, would have chosen -- well, not to disclose promptly and fully when asked all of the details, seemed to me that was so uncharacteristic of what I had grown to expect from his conduct that that was just as important as the first what I thought was breach of conduct.
>
> Q The first breach you identified as being the decision to do the work?
>
> A Well, yes, doing the work for the other life insurance company when he was a senior office of Meridian Life; seemed to me that was wrong. And then to compound the difficulties, his not, when being specifically asked about it, just making a clean breast of what had happened right off the bat, I thought that was equally wrong.

Another Board member testified that the significant factors in his decision were that Steffen did not report doing the work for Grand Pacific "and the fact that when he was asked what he had done, he did not

give an appropriate answer." A third testified that the factors behind his decision were that Steffen had failed to follow the conflict of interest policy, that Steffen denied preparing a written report, and that the incident raised questions concerning Steffen's loyalty as well as Steffen's communications with other Meridian executives.

On December 1, 1983, Steffen filed a charge of discrimination with the EEOC alleging that he had been demoted and then discharged because of his age. Steffen then filed a civil action against Meridian Mutual and Meridian Life. Steffen attempted to proceed on three claims against Meridian: (1) that Meridian violated 29 U.S.C. § 623(a) by demoting him because of his age; (2) that Meridian violated 29 U.S.C. §

623(a) by discharging him because of his age; and (3) that Meridian violated 29 U.S.C. § 623(a)(d) by discharging him in retaliation for exercising his ADEA rights. The district court granted summary judgment in Meridian's favor on two of the claims. The district court held that Steffen's discriminatory demotion claim failed as a matter of law because Steffen did not file a timely charge of discrimination challenging his demotion. The district court held that Steffen's retaliatory discharge claim failed as a matter of law because he had not filed a charge with the EEOC alleging retaliation.

The case then proceeded to trial on Steffen's discriminatory discharge claim. Steffen did not claim that the Board or JAC members had a discriminatory animus.

Rather, Steffen's case zeroed in on McCarthy. Steffen's theory essentially was that McCarthy had a discriminatory animus towards him because of his age and that "but for" McCarthy's discriminatory animus, he would not have been fired. According to Steffen, McCarthy made sure that Buennagel would write an unfavorable report on Steffen and then, through his participation at the JAC and Board of Directors' meetings, McCarthy made sure that Steffen would be terminated. Steffen further claims that McCarthy's domination of the proceedings was evidenced by the fact that he was never given a chance to explain his version of the events to either Buennagel, the JAC, or the Board. he also pointed out that at the time of trial, none of the more than 570 Meridian employees was over age 65.

The jury returned a verdict in Steffen's favor. Finding Meridian's violation to be willful, the jury also awarded Steffen liquidated damages. Meridian then filed a motion for judgment notwithstanding the verdict, which the district court granted. According to the district court, even assuming that McCarthy had a discriminatory animus, there was insufficient evidence upon which a reasonable juror could conclude that "but for" McCarthy's involvement Steffen would not have been discharged. The only effect McCarthy had on the firing process, the court stated, was his alleged misrepresentation that Steffen denied preparing a written report for Grand Pacific. The district court concluded that this simply did not create a question of

fact over whether the Board would have reached a different decision. The district court reasoned that Steffen's alleged misrepresentation was only one of the alleged failures to disclose that constituted an alleged violation of the conflict of interest policy. Furthermore, the district court stated, "no member of the Audit Committee or Board of Directors testified that that instance of denial alone had compelled his vote to terminate Steffen or had provided an independent basis for his decision to terminate Steffen . . . ."

This appeal followed.

II. ANALYSIS

A. Steffen's Demotion Claims

The first issue we must address is whether the district court properly entered

summary judgment in Meridian's favor on the ground that Steffen did not file a charge challenging his demotion until December 1st, 1983, more than 180 days after the alleged discriminatory demotion. At the outset, Meridian argues that we may sidestep this issue because the record does not contain substantial evidence to support Steffen's claim of discriminatory demotion. We disagree.

Meridian contends that the evidence shows, at most, that McCarthy and Steffen had a good-faith misunderstanding over when Steffen planned to step down from his position. This is a plausible view of the evidence. But it is not the only plausible view of the evidence. There is substantial evidence in the record that McCarthy focused on Steffen's chronological age, rather than

any formal or informal understanding between Steffen and himself in determining Steffen's replacement date. Steffen testified that there was no understanding that he was going to retire on his 65th birthday. Moreover, one of McCarthy's own memos stated that Steffen and he had an understanding that Steffen would work for five years. That five-year period would have ended in February, 1984. The memo then states that McCarthy assumed that Steffen was leaving on his 65th birthday because McCarthy did not realize that Steffen was almost 61 years old at the time. Regardless of McCarthy's intentions, the ADEA does not allow an employer to subtract nearly a year off a five-year understanding simply because of an intervening 65th birthday.

Having concluded that there is sufficient evidence in the record to go to the jury on the discriminatory demotion issue, we must next decide whether Steffen satisfied the ADEA's charge-filing requirement. The ADEA provides that "[n]o civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the [EEOC]." 29 U.S.C. § 626(d). In a non-deferral state such as Indiana, see Keitz v. Lever Brothers Co., 563 F.Supp. 230, 233-34 (N.D. Ind. 1983), an employee must file a charge within 180 days after the alleged discriminatory act occurred. 29 U.S.C. § 626(d)(1). The purpose of the charge-filing requirement is to provide the EEOC with sufficient information to notify an employer

that it has been charged with discrimination and to provide the EEOC with the opportunity to investigate the alleged unlawful practice as well as to provide the EEOC with the opportunity to eliminate any unlawful practice through informal conciliation. See Bihler v. Singer Co., 710 F.2d 96, 99 (3d Cir. 1983); see also Caldwell v. Nat'l Ass'n of Home Builders, 771 F.2d 1051, 1054-56 (7th Cir. 1985). Thus, "[i]n order to constitute a charge that satisfies the [statutory] requirement . . . , notice to the EEOC must be of a kind that would convince a reasonable person that the grievant has manifested an intent to activate the Act's machinery." Bihler, 710 F.2d at 99. See also Green v. Whirlpool Corp., 708 F.2d 128, 130 (4th Cir. 1983), cert. denied, 464 U.S. 1042 (1984).

Steffen contends that the completed Intake Questionnaire he filed on May 13th, 1983, in and of itself, satisfied the charge-filing requirement. Steffen claims support for his position in the EEOC regulations which define a "charge" as "a statement filed with the Commission by or on behalf of an aggrieved person which alleges that the name prospective defendant has engaged in or is about to engage in actions in violation of the [ADEA] . . . ." 29 C.F.R. § 1626.3. The regulations further provide that "a charge is sufficient when the Commission receives from the person making the charge either a written statement or information reduced to writing by the Commission that conforms to the requirements of [29 C.F.R.] § 1626.6." 29 C.F.R. § 1626.8(b). 29 C.F.R. § 1626.6 simply states

that "[a] charge shall be in writing and shall name the prospective respondent and shall generally allege the discriminatory act(s)."

Steffen's Intake Questionnaire certainly contains enough information to satisfy the above regulations; it names Meridian as respondent and states that he was demoted because of his age. Contrary to Steffen's arguments, however, the EEOC's regulations make clear that, while a charge is "sufficient" if it names the respondent and generally alleges discrimination, not all documents containing such information are charges. There is no other way to explain the distinction in the EEOC's regulations between a "complaint" and a "charge." A "complaint" is defined to "mean information received from any source, that

is not a charge, which alleges that a named prospective defendant has engaged in or is about to engage in actions in violation of the [ADEA] . . . ." 29 C.F.R. § 1626.3 (emphasis added). As noted above, a charge is sufficient under the regulation if it names the respondent and generally alleges a discriminatory act. Thus, under these regulations, any document that names a prospective respondent and alleges a violation of the Act falls within the definition of either a complaint or a charge. The regulations, however, only provide that the Commission shall promptly notify a respondent that a charge has been filed. 29 C.F.R. § 1626.11. The only plausible reason why the EEOC would consider one communication of information to be a "complaint" and another to be a "charge" is

that a "charge" is submitted under circumstances that would lead the EEOC to believe that the complaining party sought to "activate the Act's machinery." Moreover, there is no other plausible reason why the EEOC labels certain forms as "Intake Questionnaires" and other forms as "Charges of Discrimination."

In addition, we note that Steffen's interpretation of the regulations would raise serious questions as to whether the EEOC regulations defined the term "charge" so loosely as to relieve it of its statutory duties to notify employers and to engage in conciliation efforts. See 29 U.S.C. § 626(d). Under Steffen's interpretation of the regulations, virtually every completed Intake Questionnaire (and probably most phone messages) would fall within the

definition of a charge. But the EEOC does not routinely treat Intake Questionnaires as charges. The fine print on the back of the form states that the "principal purpose" of the form "is to solicit information to enable the Commission to avoid the intake of non-Title VII matters." (The EEOC's forms apparently lag behind its statutory authority.) The fine print then goes on to state that its "routine uses" are "to determine . . . jurisdiction over potential charges, and to provide pre-charge filing counseling . . . ." (emphasis added.) Moreover, the relevant decisionmakers at the EEOC plainly did not treat Steffen's Intake Questionnaire as a charge. The EEOC did not promptly notify Meridian that a charge had been filed or attempt conciliation, all as statutorily required. In fact, a December,

1983 entry in the EEOC logs stated that there were no active charges filed against Meridian.

Although we reject Steffen's overly-simplistic interpretation of the regulations, under the circumstances as alleged by Steffen we do not reject his argument that his Intake Questionnaire satisfied the charge-filing requirement.[1]

---

[1]Steffen also claims that the district court's grant of summary judgment was improper because his December 1, 1983 charge cured any problem with his initial filing. Steffen relies on 29 C.F.R. § 1626.8(c), which provides that "[a] charge may be amended to clarify or amplify allegations made therein . . .," and that any such amendment related to acts alleged in the original charge will relate back to the date the original charge was filed. This regulation plainly does not cover the present case. 29 C.F.R. § 1626.8(c) allows a charge to be amended to amplify or clarify allegations in a charge already filed. If Steffen's May 13th, 1983 Intake Questionnaire is not a charge, then there was no charge to be amended or clarified by the December 1st, 1983 charge.

We do note that in Casavantes v. California State University, 732 F.2d 1441 (9th Cir. 1984), the Ninth Circuit held that an employee satisfied Title VII's charge-filing requirement when he filed an unverified Intake Questionnaire within the statutory time period for filing a charge and then filed a verified formal charge outside that time period. (Unlike the ADEA, Title VII requires a charge to be filed under oath or affirmation. See 42 U.S.C. § 2000e-5(b).) Relying on the EEOC's regulations that allow a charge to be amended to cure technical defects including the lack of verification, the court reached the "inescapable conclusion that the completed Intake Questionnaire, in the context of both the amendment procedures and the liberality to be ascribed to procedural requirements, is sufficient to constitute a charge." Id. at 1443. Contra Proffitt v. Keycom Electronic Publishing, 625 F.Supp. 400, 403-04 (N.D. Ill. 1985) (Shadur, J.) (holding that until a document is submitted under oath or affirmation there is no Title VII charge to be amended), overruled on other grounds, Gilardi v. Schroeder, 833 F.2d 1226 (7th Cir. 1987). Aside from the verification requirement which has no relevance to this case arising under the ADEA, Casavantes is somewhat cryptic on the issue of whether it viewed a completed Intake Questionnaire, in and of itself, to constitute a charge or whether it was simply holding that the circumstances of that particular case warranted holding that the Intake Questionnaire was a charge. Given

The ADEA's charge-filing requirement was not intended to hold persons to elaborate pleading requirements or require that a person submit a document declaring an affirmative intention to activate the ADEA's procedures. See Bihler, 710 F.2d at 100 n.8 (Congress "substituted the requirement of filing a charge for the more stringent requirement of notifying of intent to sue."). The ADEA is remedial legislation that the courts have refused to construe in a "hypertechnical manner" so as to defeat the Act's legislative purpose. See Stearns v. Consolidated Management, Inc., 747 F.2d

---

its citation to Price v. Southwestern Bell Telephone Co., 687 F.2d 74, 79 (5th Cir. 1982), for the proposition that a completed Intake Questionnaire is not necessarily insufficient to constitute a charge, we do not read Casavantes as holding that a completed Intake Questionnaire, in and of itself, satisfies the charge-filing requirement.

1105, 1112 (7th Cir. 1984). Thus, in determining whether the charge-filing requirement has been satisfied, the courts have scrutinized the circumstances under which a document is submitted so as not to let the title of the form triumph over substance. See, e.g., Price v. Southwestern Bell Telephone Co., 687 F.2d 74, 79 (5th Cir. 1982) (Intake Questionnaire is not "necessarily legally insufficient" to constitute a charge); Rabzak v. County of Berks, 815 F.2d 17 (3d Cir. 1987) (letter seeking assistance treated as a charge); Waiters v. Robert Bosch Corp., 683 F.2d 89 (4th Cir. 1982) (mailed affidavit treated as a charge).

Under the facts as alleged by Steffen, it would be a needless triumph of form over substance to hold that his completed Intake

Questionnaire did not satisfy the ADEA's charge-filing requirement. As noted above, the information contained in the Intake Questionnaire contains sufficient information to satisfy the EEOC regulations concerning the sufficiency of charges. More important, Steffen made clear to the EEOC's Intake Officer that he intended to "activate the Act's machinery." Steffen was sent to the EEOC for the sole purpose of preserving his right to bring suit by complying with the charge-filing requirement. He communicated that purpose to the EEOC and then followed the EEOC's instructions on how to satisfy the charge-filing requirement. Under these circumstances, the Intake Questionnaire clearly gave the EEOC more than reasonable notice that, by filing the Intake Questionnaire, Steffen intended to

"activate the Act's machinery." The problem in this case is that the EEOC informed Steffen that it would be treating the Intake Questionnaire as a charge but then failed to treat it as a charge. The EEOC's failure to act on a charge, however, does not bar a person from maintaining an ADEA action. Stearns, 747 F.2d at 1112; Bihler, 710 F.2d at 99 n.7. As such, the district court improperly granted summary judgment to Meridian.

Finally, we note that the EEOC's handling of this matter does raise some serious inconsistencies that should be addressed by the EEOC. While we remain puzzled as to the source of the Intake Officer's distinction between "formal" and "informal" charges, the EEOC's position in this matter only compounds the confusion.

The EEOC, which has appeared as amicus curiae on Steffen's behalf, has supported Steffen's contention that a completed Intake Questionnaire, in and of itself, constitutes a charge. As noted earlier, however, this is quite plainly not the position it takes in practice. The ADEA does not allow the EEOC to have it both ways. If a person files a charge, the EEOC is required to perform its statutory duties of employer notification and conciliation. The inconsistencies between what the Intake Officer told Steffen, how the EEOC treats Intake Questionnaires in practice, and what the EEOC argues on appeal have led to a situation that is unfair to both employees and employers. We hope that in the future the EEOC will give better assistance to employees that will avoid needless disputes

over what should be simple, uncomplicated procedures.

B. Retaliatory Discharge Claim

The next issue Steffen raises is whether the district court properly granted Meridian summary judgment on Steffen's retaliatory discharge claim. The district court held that Steffen's retaliatory discharge claim failed as a matter of law because it did not fall within the scope of the charge Steffen filed on December 1, 1983. We agree.

ADEA claims are cognizable in a civil action if they are "like or reasonably related to the allegations of the charge and growing out of such allegations." Jenkins v. Blue Cross Mutual Hospital Insurance, Inc., 538 F.2d 164, 167 (7th Cir.) (en banc) (quoting Danner v. Philips Petroleum Co.,

447 F.2d 159, 162 (5th Cir. 1971)), cert. denied, 429 U.S. 986 (1976); see also Babrocky v. Jewel Food Co., 773 F.2d 857, 864 (7th Cir. 1985). This "scope of the charge" requirement serves the very purposes of requiring a charge to be filed in the first place. As the court noted in Babrocky, 773 F.2d 863, "[a]llowing a complaint to encompass allegations outside the ambit of the predicate EEOC charge would circumvent the EEOC's investigatory and conciliatory role, as well as deprive the charged party of notice of the charge, as surely as would an initial failure to file a timely EEOC charge."

Here, Steffen's retaliation claims do not fall within the scope of the charge submitted to the EEOC. In filling out his charge, he checked the box marked "Other"

and specifically wrote in "Age." He then complained in the body of the charge that he had been replaced by a younger man and later terminated, all because of his age. There is no mention of retaliation or any other words to that effect. Steffen apparently claims the charge's allegation that Meridian's stated reasons for its actions were pretextual allows a reasonable person to infer retaliation. This contention misses the mark by a wide margin. If Steffen believed the company's stated reasons were not pretextual he obviously would not have been claiming age discrimination. Equally wide of the mark is Steffen's contention that retaliation was reasonably related to his charge cause his Intake Questionnaire noted, as requested on the form, that he had consulted with an

attorney. Aside from the fact that the December 1, 1983 charge contained no such information, it is difficult to see how mentioning that counsel had been retained can somehow be equated with an accusation that that person's employer retaliated against him for exercising his ADEA rights. This is simply not a case where it can fairly be said that the charge alleges retaliation. Compare Jenkins, 538 F.2d at 168 (even though charging party only checked box marked "race," factual allegations in charge also fairly raised questions of sex discrimination). Steffen's retaliation claim injects an entirely new theory of liability into the case alleging unlawful activity of a much different nature than the age discrimination alleged in the charge. See Ekanem v. Health And Hospital Corp., 724

F.2d 563, 573 (7th Cir. 1983) ("A charge that is given wage is too low because of unlawful retaliation is not the same as a charge that a given wage is too low because of unlawful race discrimination.") (emphasis in original), cert. denied, 469 U.S. 821 (1984); Jensen v. Board of County Commissioners, 636 F.Supp. 293, 300 (D.Kan. 1986) (retaliatory discharge claim not reasonably related to discriminatory discharge claim); Tucker v. Harley Davidson Motor Co., 454 F.Supp. 738, 742 (E.D. Wis. 1978) (same).[2] See also Lowe v. City of

---

[2]Steffen cites to a number of cases that have allowed a retaliatory discharge claim to proceed even though the underlying charge did not mention retaliation. See, e.g., EEOC v. St. Anne's Hospital, 664 F.2d 128, 131 (7th Cir. 1981); Gupta v. East Texas State University, 654 F.2d 411, 414 (5th Cir. 1981); Grimes v. Louisville and Nashville Railroad Co., 583 F.Supp. 642, 649 (S.D. Ind. 1984); aff'd without published opinion, 767 F.2d 925 (7th Cir. 1985), cert. denied, 476 U.S. 1160 (1986). These cases,

Monrovia, 775 F.2d 998 (9th Cir. 1985) (plaintiff barred from maintaining sex discrimination action when charge only mentioned race discrimination), amended, 784 F.2d 1407 (9th Cir. 1986). As such, the district court properly entered summary judgment in Meridian's behalf on Steffen's retaliatory discharge claim.

---

however, all involved situations where the alleged retaliation arose after the charge of discrimination had been filed or the employer was given clear notice from the EEOC that retaliation was at issue; thus, "a double filing . . . would serve no purpose except to create additional procedural technicalities when a single filing would comply with the intent of Title VII." Gupta, 654 F.2d at 414. These cases are distinguishable from the present case where the alleged retaliatory acts occurred before Steffen's December 1, 1983 charge of discrimination was filed and Meridian was not given clear notice that retaliation was at issue.

C. Steffen's Discriminatory Discharge Claim.

To establish an ADEA violation, an employee is required to show that his employer took some adverse employment action, such as a discharge, against him on the basis of his age. See Dorsch v. L.B. Foster Co., 782 F.2d 1421, 1423-24 (7th Cir. 1986). The employee satisfies this burden if he proves that his age was a determining factor in the challenged decision in the sense that "but for" his employer's discriminatory animus he would not have suffered the adverse action. Id. An employee may attempt to meet this burden either by presenting direct evidence that age was a determining factor or by indirectly establishing the same fact through resort to the shifting burdens of production method articulated in Texas Dept.

of Community Affairs v. Burdine, 450 U.S. 248 (1981). See Mathewson v. National Automatic Tool Co., Inc., 807 F.2d 87, 89-90 (7th Cir. 1986). After trial on the merits, however, "the particular method of proof used is irrelevant; the main focus is simply on the ultimate question whether plaintiff's age was a determining factor in defendant's decision to terminate him." Mathewson, 807 F.2d at 90.

We review a district court's ruling on a motion for judgment notwithstanding the verdict under the same standard applied by the district court. La Montagne v. American Convenience Products, Inc., 750 F.2d 1405, 1410 (7th Cir. 1984). The standard "is whether there is substantial evidence to support the verdict; i.e., whether the evidence presented, combined with all

reasonable inferences that may be drawn from it, is sufficient to support the verdict when viewed in the light most favorable to the party winning the verdict." Mathewson, 807 F.2d at 90. Thus, we may affirm the district court's grant of judgment notwithstanding the verdict only if there is not substantial evidence in the record to support plaintiff's contention that "but for" his age he would not have been discharged.

The district court held that, even assuming that McCarthy acted with a discriminatory animus, Steffen failed to present substantial evidence that McCarthy's involvement in the disciplinary process was a determining factor in his discharge. That the Board of Directors, none of whom Steffen claims harbored a discriminatory animus

against him, would have independently determined that Steffen violated the conflict of interest policy is clear from the record. Steffen places great emphasis on the fact that there is a credibility issue over McCarthy's statement, which the Board and JAC accepted as true, that Steffen denied having prepared a written report. Steffen's alleged lie, however, was only one of the bases for the Board's conclusion that Steffen violated Meridian's rules. The Board found that Steffen disclosed confidential information and performed consulting work for a competitor without disclosure to or approval from Meridian. It is undisputed that Steffen did not tell anyone at Meridian about his work for Grand Pacific until specifically confronted by McCarthy over one month after his return.

Steffen also emphasizes that he presented evidence to support his view that Meridian and Grand Pacific did not compete and that the Meridian information contained in the Grand Pacific report was not "confidential information." Boiled down to its essence, however, all this evidence tends to show is that the members of the Board and JAC defined the terms "competitor" and "confidential information" differently than Steffen's witnesses did. Furthermore, Steffen's position is significantly undercut by his own testimony that he viewed Grand Pacific as a potential acquisition and that he had doubts as to whether doing the report would constitute a conflict of interest. And one of Steffen's own witnesses testified that some of the Meridian information disclosed by Steffen could be considered

confidential. Other attacks on the Board's conclusion only reinforce Meridian's position. For example, Steffen points out that the Chairman of the JAC testified that he would consider merely sending a copy of a Meridian Life insurance contract to Grand Pacific to be a conflict of interest. The fact that the Chairman of the JAC took a very stringent view of company policy only buttresses the conclusion that the Board would have found a conflict of interest violation independent of McCarthy's involvement.

Steffen nonetheless argues that even if the Board would have found a conflict of interest violation absent McCarthy's involvement in the process, the jury still could have found that Steffen would not have been discharged absent McCarthy's

involvement. Without a similarly situated younger employee to use as a measuring stick, this argument raises a difficult question. On one hand, the Board viewed Steffen's actions to be a serious breach of the conflict of interest policy even absent the disputed factual issue over whether Steffen lied to McCarthy. On the other hand, McCarthy was hardly a casual bystander in the whole process. But this difficult question is one we need not resolve because there is simply no substantial evidence in the record from which the jury could infer that McCarthy's involvement in the process was motivated by age animus.

To support his contention that McCarthy's involvement in the termination decision was motivated by age discrimination, Steffen relies primarily on

the fact that there was evidence in the record to show that he was discriminatorily demoted on the basis of his age. We agree that substantial evidence supports Steffen's claim that he was discriminatorily demoted. And evidence of prior discriminatory conduct can often support an inference that subsequent conduct was also motivated by a discriminatory animus. See Mathewson, 807 F.2d at 91; see also Williamson v. Handy Button Machine Co., 817 F.2d 1290, 1295 (7th Cir. 1987). But the evidence in this case fails to support any such inference. While McCarthy may have demoted Steffen because of his age, he still valued Steffen's continued presence with Meridian. McCarthy's January, 1982 memo indicated that McCarthy strongly approved of Steffen's continued employment with Meridian in an

actuarial capacity after March of 1983. In two different letters to Madren, McCarthy emphasized that "we need his services" and that one of the important tests of Madren's leadership would be the satisfactory handling of the situation with Steffen. McCarthy then reassigned Steffen actuarial responsibilities commencing in April, 1985, with full knowledge that Steffen was over age 65 and with the belief that Steffen would be a valuable resource to the company. Moreover, while Steffen complains about the size of the increase, Steffen received a 5% pay increase in 1983. After Steffen's discharge, McCarthy wrote to Meridian's Personnel Department to have Steffen replaced "ASAP." When a satisfactory replacement was not found, Meridian had to contract out the work.

In light of these facts, it defies logic to conclude that, approximately six months after McCarthy placed Steffen into a position, McCarthy seized upon Steffen's work for Grand Pacific as a pretext to discharge him because of his age. In fact, our reading of the record is essentially no different from Steffen's own attorney. In response to questioning from the bench on this point, Steffen's counsel stated that the record does show that McCarthy honestly believed that Steffen could do good work for the company and, as long as Steffen was "retired" from the formal management structure of the company, McCarthy viewed Steffen's continued presence as an asset to the company. But, according to Steffen's counsel, as soon as Steffen hired an attorney and refused to take the

discriminatory demotion lying down, McCarthy contrived to have him terminated. That is now, however, discrimination based on age. That is retaliation based upon the exercise of rights under the ADEA. Perhaps there was sufficient evidence to justify a finding of retaliation, but that question was not before the jury. The only question presented to the jury was whether Steffen's age was a determining factor in his discharge. Because the record does not contain substantial evidence to support the jury's verdict on this issue, the district court properly granted Meridian judgment notwithstanding the verdict.

III. CONCLUSION

In sum, we affirm the district court's grant of summary judgment on Steffen's retaliatory discharge claim and affirm the

district court's grant of judgment notwithstanding the verdict on Steffen's discriminatory discharge claim. We reverse the district court's grant of summary judgment in Meridian's favor on Steffen's discriminatory demotion claim and remand for further proceedings consistent with this opinion. In view of the fact that the damages in this case appear to be limited to the relative size of Steffen's pay increase during the last year of his employment, we hope the parties will see to it to settle this dispute without the need for further proceedings.

The judgment of the district court is

AFFIRMED IN PART,

REVERSED IN PART,

AND REMANDED.

A true Copy:

Teste:

_____

Clerk of the United States
Court of Appeals for the
Seventh Circuit

APPENDIX B

JUDGMENT -- ORAL ARGUMENT

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

October 11, 1988

Before

Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. DANIEL A. MANION, Circuit Judge
Hon. HUBERT L. WILL, Senior District Judge*

WALTER W. STEFFEN, Plaintiff-Appellant,	) Appeal from the United States District Court for the Southern District of Indiana,
No. 87-1059 v.	) Indianapolis Division. No. 84 C 1693
MERIDIAN LIFE INSURANCE COMPANY, and MERIDIAN MUTUAL INSURANCE COMPANY, Defendants-Appellees.	) Judge Sarah Evans Barker

This cause was heard on the record from the United States District Court for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

---

* The Honorable Hubert L. Will, Senior District Judge of the Northern District of Illinois, is sitting by designation.

On consideration where, IT IS ORDERED AND ADJUDGED by this Court that the judgment of said District Court in this cause appealed from be, and the same is hereby, AFFIRMED IN PART, REVERSED IN PART and the cause is REMANDED, in accordance with the opinion of this Court filed this date. Each party shall bear its own costs on appeal.

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

January 18, 1988

Before
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. DANIEL A. MANION, Circuit Judge
Hon. HUBERT L. WILL, Senior District Judge*

WALTER W. STEFFEN, Plaintiff-Appellant,	) Appeal from the United States District Court for the Southern District of Indiana,
No. 87-1059 v.	) Indianapolis Division. No. 84 C 1693
MERIDIAN LIFE INSURANCE COMPANY and MERIDIAN MUTUAL INSURANCE COMPANY, Defendants-Appellees.	) Sarah Evans Barker, Judge

O R D E R

On consideration of the petition for rehearing and suggestion for rehearing in banc filed in the above-entitled cause by

* The Honorable Hubert L. Will, Senior District Judge for the Northern Distirct of Illinois, is sitting by designation.

Plaintiff-Appellant, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same hereby is, DENIED.

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WALTER W. STEFFEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO.IP 84-1693C
	)	
MERIDIAN LIFE INSUR-ANCE COMPANY and	)	
MERIDIAN MUTUAL	)	
INSURANCE COMPANY,	)	
	)	
Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the court on defendant Meridian Life Insurance Company's ("Meridian Life") October 15, 1985 motion for partial summary judgment. On January 2, 1986, plaintiff Walter W. Steffen ("Steffen") filed his brief in opposition to the motion. This matter became fully

briefed with the filing of Meridian Life's reply brief on January 27, 1986.

The court, being duly advised now GRANTS Meridian Life's motion for summary judgment for the reasons stated herein.

Findings of Fact

1. Walter W. Steffen is a resident of Indianapolis, Indiana.

2. Meridian Mutual Insurance Company ("Meridian Mutual") is a corporation existing under the laws of the State of Indiana, and has its principal place of business in Indianapolis. Meridian Life is a corporation existing under the laws of the State of Indiana and has its principal place of business in Indianapolis. Meridian Mutual is the parent corporation of Meridian Life. Meridian Life is a wholly owned subsidiary of Meridian Mutual.

3. Steffen was employed by defendant Meridian Mutual as a Senior Vice President of Meridian Life in charge of the day-to-day operations from approximately February 26, 1979, until March 31, 1983.

4. Steffen turned sixty-five (65) years of age on March 12, 1983.

5. On March 31, 1983, Steffen's duties as Senior Vice President were assigned to a younger employee. On this day, Steffen began his new position as an actuary for Meridian Life.

6. On May 13, 1983, Steffen filled out an "Intake Questionnaire" at the Indianapolis Equal Employment Opportunity Commission ("EEOC") office. In the questionnaire, Steffen stated that on March 31, 1983, a younger person replaced him as

the chief operating officer and that he was demoted.

7. Soon after the questionnaire referred to in finding of fact # 6 was filed, Steffen, through his attorney, attempted unsuccessfully to resolve the matter with Meridian Mutual.

8. On November 18, 1983, Steffen was terminated from his employment at Meridian Mutual.

9. On December 1, 1983, Steffen filed a charge of discrimination against Meridian Life, alleging that he was discriminated on the basis of his age, particularly that: (1) he was terminated from his employment on November 18, 1983, (2) he was demoted from Senior Vice President and Manager of Meridian Life to Senior Vice President on

March 31, 1983, and (3) he was denied profit sharing benefits in January 1983.

10. In Count I of plaintiff's Second Amended Complaint, Steffen alleges that he was unlawfully demoted on March 31, 1983, and replaced by a younger employee in violation of his rights under the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 621 et seq. In Count II, he alleges that he was discharged on December 31, 1983, in retaliation for asserting his rights under the ADEA. Count III is an allegation that defendants Meridian Life and Meridian Mutual willfully and deliberately discharged him because of his age, in violation of the ADEA.

11. Steffen's December 1, 1983 charge of discrimination did not contain allegations of retaliatory discharge as

alleged in Count II of the Second Amended Complaint.

12. Defendants seek a summary judgment on Count II of the Second Amended Complaint because Steffen failed to exhaust his administrative remedies by filing with the EEOC a charge of retaliatory discharge as directed by 29 U.S.C. § 626(d).

Conclusions of Law

1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1391(b).

2. Defendants initially moved for summary judgment on Counts I, II, and III of plaintiff's original Complaint. In his Second Amended Complaint, however, Steffen did not include a claim of retaliatory discharge as a state cause of action, as he had alleged in count III of the original

complaint. Thus, the portion of the motion for summary judgment relating to that claim is now moot. Also, defendants have withdrawn their motion as it relates to Count I because plaintiff is no longer asserting his claim that defendants made a discriminatory demotion in violation of the ADEA. The remaining portion of the motion for summary judgment relates only to Count II.

3. Title 29, United States Code, section 626(d) provides:

> No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission . . . .

4. The Court concludes that Steffen's failure to include reference to the retaliatory discharge claim in the charge of discrimination precludes him from

bringing that claim in this Court. It is well settled that the scope of a plaintiff's complaint in the district court is limited to allegations which are like or reasonably related to the EEOC charge and those reasonably expected to grow out of the charge of discrimination. Babrocky v. Jewel Food Co. & Retail Meatcutters, 773 F.2d 857, 864 (7th Cir. 1985); Jenkins v. Blue Cross Mutual Hospital Ins., Inc., 538 F.2d 164, 167 (7th Circ. 1976) (en banc), cert. denied, 429 U.S. 986 ( ). Steffen failed to include any claim of retaliatory discharge in the charge of discrimination. The court concludes that the retaliatory discharge claim is not like or reasonably related to the allegations of discrimination actually contained in the charge of discrimination and that he cannot bring the

retaliation claim in this court, because it is beyond the scope of his complaint. Although it is arguable that the retaliation claim is a continuation of the unlawful discrimination, it is sufficiently different from the charges of discrimination actually alleged so as to constitute a separate and distinct unlawful act. Steffen's failure to mention this claim in the charge precludes him from bringing it in this court.

5. Steffen contends that this court may properly entertain his retaliation claim although it was not included in the EEOC charge because the court has jurisdiction over like or related matters (such as retaliation charges) which might reasonably be expected to be the subject of the EEOC investigation. (Relying on Grimes v.

Louisville and Nashville Railroad Company, 583 F.Supp. 642 (S.D. Ind. 1984), aff'd 767 F.2d 925 (7th Cir. 1985) (Title VII case)). There is a line of cases which allows a plaintiff to pursue a claim of retaliation without filing a subsequent charge with the EEOC. See, e.g., Almendral v. New York State Office of Mental Health, 743 F.2d 963 (2d Cir. 1984); Waiters v. Parsons, 729 F.2d 233 (3d Cir. 1984); Gupta v. East Texas State Univ., 654 F.2d 411 (5th Cir. 1981); Jeter v. Boswell, 554 F.Supp. 946 (N.D. W. Va. 1983). In each of these cases, however, the discriminatory act not included in the charge of discrimination occurred subsequent to the filing of the EEOC charge. Thus, in these cases, the courts reasoned that "[w]here discriminatory actions continue after the filing of an EEOC complaint

. . . the purposes of the statutory scheme are not furthered by requiring the victim to file additional EEOC complaints . . ." (Waiters, 729 F.2d at 237) and the courts permitted the subsequent claims if the "acts were 'reasonably related' or could 'reasonably [have been] expected to grow out of the [EEOC] charge of discrimination.'" Almendral, 743 F.2d at 967 (citations omitted).

6. The facts in the present case are distinguishable from those in the line of cases cited in the previous conclusion. Here, the allegedly retaliatory conduct occurred on November 18, 1983, when Steffen was allegedly terminated for filing a questionnaire with the EEOC on May 13, 1983. Steffen did not file a charge of discrimination with the EEOC until December

1, 1983, after the alleged retaliatory act had occurred. Unlike the situation in the cases cited above, the retaliatory discharge or continuing discrimination in this case did not occur subsequent to the filing of the EEOC charge. If Steffen intended to pursue the retaliatory discharge claim in this court, he must have included it in his EEOC charge which was filed after the allegedly continuing discriminatory conduct occurred. Because he did not, the court cannot now entertain this claim.

7. The law is with the defendants and against the plaintiff with respect to Count II of the Second Amended Complaint, and judgment for the defendants on that claim shall be entered accordingly.

Dated this \s\ 14th day of May, 1986.

\s\ Sarah Evans Barker
Sarah Evans Barker, Judge
United States District Court
Southern District of Indiana

Copies to:

Mr. Robert G. Barker
One Indiana Square, Suite 3120
Indianapolis, Indiana 46204-2082

Mr. Bruce A. Hugon
3665 North Washington Boulevard
Indianapolis, Indiana 46205

Mr. John T. Neighbours
ROBERTS, RYDER, ROGERS & SCISM
One Indiana Square, Suite 2020
Indianapolis, Indiana 46204

Mr. C. Wendell Martin
MARTIN, WADE, HARTLEY & HOLLINGSWORTH
3590 North Meridian Street
Indianapolis, Indiana 46208

Mr. H. Paul Carpenter
Ms. Susan Bowron-White
MERIDIAN LIFE INSURANCE COMPANY
2955 North Meridian Street
Indianapolis, Indiana 46208

APPENDIX E

UNITED STATES DISTRICT COURT
Southern District of Indiana

WALTER W. STEFFEN

v.

JUDGMENT IN A CIVIL CASE

MERIDIAN LIFE INSURANCE COMPANY and MERIDIAN MUTUAL INSURANCE COMPANY

Case Number: IP 84-1693-C

/xx/ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

/ / **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that Judgement be Entered for the Plaintiff and against the Defendants. Damages are

assessed against the Defendant in the amount of $178,936.00 actual damages and liquidated damages in an equal amount for a total of $357,872.00

July 14, 1986
Date

/s/ John A. O'Neal
Clerk
/s/ Barbara Williamson
(By) Deputy Clerk

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WALTER W. STEFFEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO.IP 84-1693C
	)	
MERIDIAN LIFE INSURANCE COMPANY and MERIDIAN MUTUAL INSURANCE COMPANY,	)	
	)	
Defendants.	)	

AFFIDAVIT OF WALTER W. STEFFEN

Walter W. Steffen, being first duly sworn on oath, deposes and states:

1. I am the Plaintiff in the above captioned cause of action.

2. I make this Affidavit from personal knowledge and am competent to testify to all facts set forth below.

3. This Affidavit is submitted in support of Plaintiff's Memorandum In Opposition To Meridian Life Insurance

Company's ("Meridian Life") Motion For Partial Summary Judgment which was submitted on October 15, 1985.

4. I was employed by Meridian Mutual Insurance Company ("Meridian Mutual") as a Senior Vice President of Meridian Life from approximately February 26, 1979 until March 31, 1983. As Senior Vice President of Meridian Life, I was in charge of the day-to-day operations of Meridian Life.

5. I turned sixty-five (65) on March 12, 1983.

6. On March 31, 1983, I had all my duties as Senior Vice President of Meridian Life transferred to a newly hired younger person.

7. I was told by Meridian Mutual President Mr. Harold C. McCarthy that on and after March 31, 1983 I would be employed by

Meridian Mutual as an Actuary for Meridian Life.

8. No person at Meridian Mutual ever notified me about any dissatisfaction with my performance as Senior Vice President of Meridian Life. Attached to this Affidavit as Exhibit "A" is a copy of the "1982 Life Results Board Report" compiled in the normal course of business by Meridian Life and presented to the Meridian Life Board of Directors at its Corporate Meeting held on Friday, April 15, 1983.

9. The transferring of my duties and responsibilities as Senior Vice President of Meridian Life and the determination that my employment after March 31, 1983 would be as an Actuary for Meridian Life were accomplished without my consent and over my continued protests.

10. After my demotion from Senior Vice President to Actuary, I was required to create monthly reports which detailed my activities for the previous month. I was never required to create or submit monthly reports before my March 31, 1983 demotion.

11. During an April, 1983 cruise with several Meridian Mutual officers and agent, I was referred to at an agent awards meeting as continuing after my "normal retirement date" as a consultant to Meridian Life.

12. On May 31, 1983, I was told by the Meridian Mutual Director of Marketing that I would not be allowed to attend a Meridian Agency meeting to be held June 7, 1983 at the Otter Creek Golf Club in Columbus, Indiana. I had always been invited to such Agency meetings in the past.

13. At no time during my employment with Meridian Mutual did I notice any government-approved poster relating to equal employment opportunity anywhere on the Meridian Mutual premises located at 2955 North Meridian Street, Indianapolis, Indiana.

14. I sought the advise of an attorney in early May, 1983. I retained Richard L. Zwieg, Attorney at Law, 1444 Consolidated Building, 115 North Pennsylvania Street, Indianapolis, Indiana 46204. Mr. Zwieg attempted to reconcile the dispute between Meridian Mutual and me from early May, 1983 into the Fall of 1983. Mr. Zwieg died on or about July 1, 1984. Attached as Exhibit "B" are copies of some of the correspondence between Mr. Zwieg and Meridian Mutual. This correspondence occurred in the normal course

of Mr. Zwieg's representation of me and came into my possession when I picked up my file from Mr. Zwieg's office after his death.

15. Mr. Zwieg, during our first conference in the first or second week of May, 1983, stated to me that there was a 180-day period after someone is the subject of discriminatory activities when the person discriminated against must go to the United States Equal Employment Opportunity Commission ("EEOC") and give them notice of such discrimination.

16. On May 13, 1983, I went to the United States EEOC office in the United States Court House, 46 East Ohio Street, Indianapolis, Indiana. I met with an EEOC counsellor by the name of Mr. Andres Gonzales. Mr. Gonzales interviewed me about the basis of my allegations of

discrimination by Meridian Mutual. Mr. Gonzales told me there were at least two ways the EEOC handles this type of situation. Mr. Gonzales told me that I could file a formal complaint, that the EEOC would immediately investigate Meridian Mutual to determine if the violations alleged in the complaint were well-founded and then the EEOC would take appropriate action. Mr. Gonzales also told me that if I didn't want the EEOC to actively investigate Meridian Mutual, I could file an informal complaint by filling out a document entitled Intake Questionnaire and that the EEOC file created by my filling out this Intake Questionnaire would protect my right to bring an action against Meridian Mutual for my March, 1983 demotion if my

private attempts at reconciliation with Meridian Mutual proved unsuccessful.

17. I filled out the Intake Questionnaire dated May 13, 1983 in the presence of Mr. Gonzales and left this Intake Questionnaire with Mr. Gonzales in reliance on his representation that this notice would protect my right to bring an action against Meridian Mutual for my March, 1983 demotion if my private attempts at reconciliation with Meridian Mutual proved unsuccessful.

18. I was terminated by Meridian Mutual effective November 18, 1983.

FURTHER AFFIANT SAYETH NOT.

/s/ Walter W. Steffen
WALTER W. STEFFEN

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Subscribed and sworn to before me, a Notary Public, in and for said County and State, this 20th day of December, 1985.

/s/ Sherron E. Dean
Sherron E. Dean, Notary Public

My Commission Expires: 12/11/88

My County of Residence: Marion

May 13, 1983

Mr. Harold McCarthy
Meridian Insurance
2955 N. Meridian Street
P. O. Box 1980
Indianapolis, Indiana 46206

Re: Walter Steffen

Dear Mr. McCarthy:

Please be advised that I have been retained by Mr. Walter Steffen to pursue a claim against Meridian Insurance under the Age Discrimination in Employment Act.

It is my understanding that Mr. Steffen was employed by Meridian Insurance companies in February, 1979. He was hired as a Senior Vice President in charge of Meridian Life Insurance Company. At the time of his

employment, it is my understanding that Mr. Steffen was adviser, that he would not be eligible to participate in the pension program of the Company. However, this was of relatively minor concern to him since he intended to work until his retirement age of 70.

During the time that Mr. Steffen has been employed by Meridian Insurance, he has dramatically altered the course of that Company, leading it to sales income which far exceeded the Company's legitimate expectations. In fact, according to the figures which I have reviewed, the income for 1982 exceeded the previous high of any year by 350%.

Nonetheless, in January, 1983, Meridian Insurance hired William Madren to the position of Vice President of Meridian Life Insurance Company. Mr. Madren was placed in charge of the Life Division and, it is my understanding, Mr. Steffen was assigned relatively minor responsibilities of a consultant, although he maintained his title of Senior Vice President. Together with this demotion in responsibilities, Mr. Steffen received a minor salary raise of 5% which represented, according to you, a "re-earning of position in grade". Thus, although he was complimented extensively for his efforts in generating a nearly fourfold

increase in premium income for the Life Division, he was rewarded by a nominal increase in salary.

As you are probably well-aware, the Age Discrimination in Employment Act was designed precisely to prohibit this kind of personnel action taken against older but presumably highly valued employees. Mr. Steffen was recruited to Meridian Insurance in an effort to revitalize the Life Division. He did precisely that. He continues to provide essential and valuable services to the Company and has every intention of continuing to do so in the future. It is far to early in his life for Mr. the Company to relegate him to an insignificant position. Had there been some

reason other than his age for these actions, I am certain Mr. Steffen would not now be protesting his demotion and denial of a proper merit salary increase. If the Company has information supporting the proposition that Mr. Steffen has failed to perform in a manner expected of him and that his failures led to these adverse actions, that information should be forthcoming. If it is not, we can only assume that the Company's actions toward him have been motivated by his age. This the law does not permit.

I would appreciate it if you would contact me upon your receipt of this letter so that we may endeavor to settle this

dispute. In the interim, you should know that I have advised Mr. Steffen of his rights and remedies under the ADEA so that appropriate action can be taken in a timely fashion.

I look forward to hearing from you.

Very truly yours,

Richard L. Zweig

RLZ:abm

cc: Mr. Walter Steffen

June 1, 1983

Mr. Richard L. Zweig
Attorney at Law
1444 Consolidated Building
115 North Pennsylvania
Indianapolis, Indiana 46204

Dear Mr. Zweig:

As you know, I have responded to your May 18 letter by telephone, and each of us has tried a couple of times to be back in touch. When I last called, you were in court but, as I understand it, will call me when you find it convenient. I am awaiting your call so that we might discuss your letter.

Sincerely,

/s/ Harold C. McCarthy

Harold C. McCarthy
President

HMC/nw

APPENDIX G

[Face of EEOC Form 283]

INTAKE QUESTIONNAIRE

Please answer the following questions, telling us briefly why you believe you have been discriminated against in employment. An officer of the EEOC will talk with you after you complete this form.

(PLEASE PRINT)

DATE: 9-13-83

NAME Walter W. Steffen
(First) (Middle Name or Initial) (Last)

ADDRESS 406 Bent Tree Lane

CITY Indianapolis STATE IN

ZIP CODE 46260 COUNTY Marion

TELEPHONE NUMBER (Include Area Code)
317-251-2406 (Home) 317-927-8275 (Work)

Please provide the name of a relative (other than spouse), friend, or neighbor who is in the local area and who would know how to reach you.

NAME Joseph W. Steffen RELATIONSHIP Son

TELEPHONE (Include Area Code) 317-283-4105

ADDRESS 317 E. 50th Street

CITY Indianapolis STATE IN

ZIP CODE 46205

What action was taken against you that you believe to be discriminatory? What harm, if any, was caused to you in your work situation as a result of that action?

After the President lauded the company results in 1982 -- 350% of the companies previous best year -- and after lauding my personal contribution thereto -- at the end

of the year I was informed that a new man (younger) was replacing me as the Company's chief operating officer and manager because I was age 65, which was designated as my "Normal Retirement Age" in print and conversation. An offer for me to stay in a demoted position was made. In 1983 the new man was brought in and placed in the job effective 3/31/83, the end of the month when I reached 65 on 3/12/83.

Do you believe this action was taken against you because of: (check the one(s) that apply and specify your race, sex, religion, or ethnic identity.)

/___/ Race /___/ Sex /___/ Religion

/___/ National Origin /X/ Other, Explain Briefly Below

Age

I WAS DISCRIMINATED AGAINST BY: (Check the one(s) that apply)

/X/ Employer /__/ Union (Give Local No.)

/__/ Employment Agency /__/ Other (Specify)

_____

NAME Meridian Life Insurance Co.

ADDRESS 2955 N. Meridian St.

CITY, STATE, ZIP CODE Indianapolis, IN 46206

APPROXIMATE NO. EMPLOYED BY THIS EMPLOYER OR MEMBERS IN THE UNION _____

Are you now employed by the Employer that harmed you? Answer below.

YES: FROM 2-28-1979
(Date)

CURRENT POSITION Senior VP

Have you sought assistance about the action you think was discriminatory from any Government agency, from your union, or from any other source? /X/ Yes /___/ No

(If answer is yes, complete below.)

NAME OF SOURCE OF ASSISTANCE

Attorney R. Zwieg, 115 N. Pennyslvania, Indpls, IN DATE 5-83

RESULT, IF ANY:

In process -- no results as yet

Have you filed an EEOC Charge in the past?

/___/ Yes /X/ No

(If answer is yes, complete below.)

APPROX. DATE FILED	ORGANIZATION CHARGED	CHARGE NUMBER IF ANY

APPENDIX H

[Face of EEOC Form 5A MAR. 79]

CHARGE OF DISCRIMINATION

IMPORTANT: This form is affected by the Privacy Act of 1974: see Privacy Act Statement on reverse before completing it.

Equal Employment Opportunity Commission

NAME (Indicate Mr. Ms. or Mrs.)

Mr. Walter W. Steffen

STREET ADDRESS

406 Bent Tree Lane

CITY, STATE AND ZIP CODE

Indianapolis, IN 46260

COUNTY	HOME TELEPHONE NUMBER (Include Area Code)
Marion	317-251-2406

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME. (If more than one list below).

NAME

Meridian Life Insurance Company

STREET ADDRESS

2955 N. Meridian St.

CITY, STATE, AND ZIP CODE

Indianapolis, IN

TELEPHONE NUMBER (Include area code)

927-8100

CAUSE OF DISCRIMINATION BASED ON MY (Check appropriate box(es))

/ / Race / / Color / / Sex / / Religion

/ / National Origin /X/ Other (Specify)

Age

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, and year)

November 18, 1983

THE PARTICULARS ARE:

I. A. On November 18, 1983, I was terminated from my position of Senior Vice President. I was hired in January 1979. Respondent employs more than 20 employees.

B. On March 31, 1983, I was demoted from Senior Vice President and Manager of Life Operations to Senior Vice President.

C. In January 1983, I was denied Profit Sharing Benefits.

II. A. Harold McCarthy (56), President, stated I was being terminated due to a conflict of interest.

B. Mr. McCarthy, stated that I was being replaced because I was reaching the normal retirement age.

C. Respondent did not state why I was not included in the Profit Sharing Plan.

III. I feel that I have been discriminated against because of my age, 65 (3/12/18), in that:

A. 1. On November 18, 1983, Mr. McCarthy came into my office and stated that I was being terminated because I gave some advise to another company when I was on vacation in Hawaii. The advice was no more than what

we received from other companies in our territory.

2. At the time of my termination I was the oldest employee in the company. I feel that Respondent used the conflict of interest as a pretext to terminate me.

B. In January 1983, Respondent hired Bill Madren, (45) to assume my managerial duties in March, 1983, when I reached 65.

C. To my knowledge, I was the only employee not included to the Profit Sharing Plan.

I will advise the agency if I change my address or telephone number and I will cooperate fully with it in the processing

of my charge in accordance with its procedures.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: 12/1/83

CHARGING PARTY (Signature)

/s/ Walter W. Steffen

Supreme Court, U.S.
FILED
MAY 26 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1810

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

WALTER W. STEFFEN,
Petitioner,
v.
MERIDIAN LIFE INSURANCE COMPANY AND
MERIDIAN MUTUAL INSURANCE COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

C. WENDELL MARTIN
MARTIN WADE HARTLEY & HOLLINGSWORTH
3590 North Meridian Street
Indianapolis, Indiana 46208
(317) 924-6700

SUSAN BOWRON-WHITE
MERIDIAN LIFE INSURANCE COMPANY
2955 North Meridian Street
Post Office Box 1980
Indianapolis, Indiana 46206
(317) 927-8213

JOHN T. NEIGHBOURS *
MITZI HARRIS MARTIN
BAKER & DANIELS
Suite 2700
300 North Meridian Street
Indianapolis, Indiana 46204
(317) 237-0300

* Counsel of Record

Counsel for Respondents

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. Whether, when determining if a civil action is within the scope of an administrative charge under the Age Discrimination in Employment Act ("ADEA"), courts employ a uniform standard that comports with statutory procedural requirements without creating unnecessary procedural barriers for employees who believe their employers have discriminated against them.

2. Whether the court below correctly applied the uniform standard to the particular facts of this case.

LIST OF PARTIES

Respondents Meridian Life Insurance Company and Meridian Mutual Insurance Company were defendants-appellees below, urging affirmance of the district court's judgment. Pursuant to Rule 28.1, Respondents state the following:

(1) Meridian Life Insurance Company, which is a wholly-owned subsidiary of Meridian Mutual Insurance Company, has no non-wholly owned subsidiary or affiliate corporation; and

(2) Meridian Mutual Insurance Company has no parent corporation or affiliate corporation. It has one non-wholly owned subsidiary, Meridian Insurance Group, Inc.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW, JURISDICTION AND STATUTORY PROVISIONS	1
STATEMENT OF THE CASE	2
I. Background	2
II. Proceedings Below	3
SUMMARY OF ARGUMENT	4
REASONS FOR DENYING THE WRIT OF CERTIORARI	6
I. Lower Courts' "Scope Of The Charge" Test Is A Uniform Standard That Recognizes Statutory Procedural Requirements And Protects The Rights Of Laymen Initiating The Administrative Process	6
II. The Court Below Correctly Applied Well-Established Legal Principles To The Facts	11
A. The Court Below Properly Concluded That Retaliation Was Not Within The Scope Of Steffen's EEOC Charge	11
B. The Decision Of The Court Below Does Not Require The Filing Of A Second Charge That Specifically Alleges Retaliation	17
III. This Case Does Not Merit The Court's Review	19
CONCLUSION	19

TABLE OF AUTHORITIES

CASES — Page

Babrocky v. Jewel Food Co. and Retail Meatcutters Union, 773 F.2d 857 (7th Cir. 1985) 7, 8, 9, 10, 16
Baldwin County Welcome Center v. Brown, 466 U.S. 147, *reh'g denied*, 467 U.S. 1231 (1984) 6
EEOC v. Reichhold Chemicals, 700 F.Supp. 524 (N.D. Fla. 1988) 18
EEOC v. St. Anne's Hospital of Chicago, 664 F.2d 128 (7th Cir. 1981) 16
Ekanem v. Health and Hospital Corp., 724 F.2d 563 (7th Cir. 1983), *cert. denied*, 469 U.S. 821 (1984) 13
Grimes v. Louisville and Nashville Railroad Co., 583 F.Supp. 642 (S.D. Ind. 1984), *aff'd without opinion*, 767 F.2d 925 (7th Cir. 1985), *cert. denied*, 476 U.S. 1160, *reh'g denied*, 478 U.S. 1031 (1986) 10, 18
Gupta v. East Texas State University, 654 F.2d 411 (5th Cir. 1981) 18
Hemmige v. Chicago Public Schools, 786 F.2d 280 (7th Cir. 1986) 10
Jenkins v. Blue Cross Mutual Hospital Ins., Inc., 538 F.2d 164 (7th Cir.), *cert. denied*, 429 U.S. 986 (1976) 7, 8, 13
Jensen v. Board of County Commissioners for Sedgwick County, 636 F.Supp. 293 (D. Kan. 1986) 14
Jiron v. Sperry Rand Corp., 423 F.Supp. 155 (D. Utah 1975) 12, 16
Johnson v. General Electric, 840 F.2d 132 (1st Cir. 1988) 15
Love v. Pullman Co., 404 U.S. 522 (1972) 6, 8
McCray v. Standard Oil, 76 F.R.D. 490 (N.D. Ill. 1977) 7
Meyer v. Macmillan Publishing Co., 85 F.R.D. 149 (S.D.N.Y. 1980) 13, 15
Mohasco Corp. v. Silver, 447 U.S. 807 (1980) 6
Reiter v. Center Consolidated School District No. 26-JT, 618 F.Supp. 1458 (D. Colo. 1985) 10, 11

TABLE OF AUTHORITIES—Continued

Page

Ross v. Kansas Commission on Civil Rights, 45 Fair Empl. Prac. Cas. 1472 (D. Kan. 1982) 17, 18
Sanchez v. Standard Brands, Inc., 431 F.2d 455 (5th Cir. 1970) 7, 9, 12, 16, 18
Smith v. Sentry Ins., 674 F.Supp. 1459 (N.D. Ga. 1987) 8, 15
Tucker v. Harley Davidson Motor Co., 454 F.Supp. 738 (E.D. Wis. 1978) 13
Zipes v. Trans World Airlines, Inc., 455 U.S. 385, *reh'g denied*, 456 U.S. 940 (1982) 6, 8

OTHER AUTHORITIES

29 U.S.C. § 626(d) (1982) 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

No. 88-1810

WALTER W. STEFFEN,

Petitioner,

v.

MERIDIAN LIFE INSURANCE COMPANY AND MERIDIAN MUTUAL INSURANCE COMPANY,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

BRIEF IN OPPOSITION

Respondents, Meridian Life Insurance Company and Meridian Mutual Insurance Company (collectively "Meridian"), defendants-appellees in the proceedings below, urge this Court to deny the Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit entered October 11, 1988.

OPINIONS BELOW, JURISDICTION AND STATUTORY PROVISIONS

Meridian accepts the statement as to opinions below, jurisdiction, and statutory provisions involved as stated by the Petitioner, Walter W. Steffen ("Steffen"), plaintiff-appellant in the proceedings below.

STATEMENT OF THE CASE

I. Background

On March 31, 1983, Steffen's duties with Meridian were realigned. (Pet. App. F, pp. 86a-87a.) Subsequently, in early May 1983, Steffen retained an attorney who advised him of his rights and remedies under the ADEA. (Pet. App. F, pp. 89a, 99a.)

On May 13, 1983, after consulting with his attorney, Steffen completed an Intake Questionnaire at the Equal Employment Opportunity Commission ("EEOC") in which he alleged that he had been demoted because of his age and specifically noted that he was represented by an attorney.[1] (Pet. App. G, pp. 102a-103a, 105a.) That attorney continued to represent Steffen until the attorney's death on or about July 1, 1984. (Pet. App. F, pp. 89a-90a.)

After an internal auditor's investigation of Steffen's performing work for another life insurance company, a potential violation of Meridian's written conflict of interest policy, and a review of the auditor's report by the Joint Audit Committee of Meridian's Board of Directors, the Committee found that Steffen had violated Meridian's conflict of interest policy and recommended that the Board of Directors take appropriate disciplinary action. The Board then unanimously resolved to accept Steffen's resignation, if offered, or, alternatively, to terminate his employment relationship with Meridian. (*See generally* Pet. App. A, pp. 12a-26a.) Steffen's employment was terminated on November 18, 1983. (Pet. App. H, p. 108a.)

On December 1, 1983, Steffen filed a second EEOC charge in which he alleged he was discharged because of

---

[1] The Seventh Circuit held that, under the circumstances as alleged by Steffen, this Intake Questionnaire satisfied the statutory charge-filing requirement. (Pet. App. A, p. 40a).

his age and precisely detailed the facts he believed supported his allegations. (Pet. App. H, pp. 108a-111a.) The charge did not allege retaliation or refer to any facts to indicate a nexus between his discharge and his prior participation in the administrative process or his opposition to Meridian's alleged discriminatory practices. Moreover, the EEOC, which was not alerted to any claim of retaliatory conduct, did not investigate or attempt conciliation of any alleged retaliatory conduct. (Record on Appeal, Doc. 05, attached Ex. 2, pp. 38-39; Doc. 08, attached Ex. 1, p. 115.)

II. Proceedings Below

On December 27, 1984, more than one year after filing his charge of discriminatory discharge, Steffen filed his judicial complaint wherein for the first time he claimed that he was discharged in retaliation for exerting his rights under the ADEA.

On October 15, 1985, Meridian moved for summary judgment on the retaliatory discharge claim based on Steffen's failure to exhaust his administrative remedies by filing with the EEOC a charge of retaliatory discharge in accordance with the requirements of 29 U.S.C. § 626(d). (Pet. App. D, pp. 70a, 75a.) The district court entered judgment for the defendants on that claim. (Pet. App. D, p. 81a.) The district court distinguished Steffen's case from cases in which courts permit plaintiffs to seek relief for acts of retaliation which are not listed in an initial charge filed before the alleged retaliatory conduct occurred. (Pet. App. D, pp. 78a-81a.) The district court emphasized that Steffen's alleged retaliatory discharge occurred before he filed his second EEOC charge: "If Steffen intended to pursue the retaliatory discharge claim in this court, he must have included it in his EEOC charge which was filed *after* the allegedly continuing discriminatory conduct occurred." (Pet. App. D, p. 81a (emphasis added).)

The Seventh Circuit affirmed the district court: "[T]he district court properly entered summary judgment in Meridian's behalf on Steffen's retaliatory discharge claim." (Pet. App. A, p. 52a.) The Court of Appeals, too, focused on the specific facts of this case and distinguished it from cases in which courts "have allowed a retaliatory discharge claim to proceed even though the underlying charge did not mention retaliation." (Pet. App. A, p. 51a n.2.) Those cases, the court observed,

> all involved situations where the alleged retaliation arose *after* the charge of discrimination had been filed or the employer was given clear notice from the EEOC that retaliation was at issue; thus, "a double filing . . . would serve no purpose except to create additional procedural technicalities when a single filing would comply with the intent of Title VII."

(Pet. App. A, p. 52a n.2 (original emphasis).) The court continued, "These cases are distinguishable from the present case where the alleged retaliatory acts occurred *before* Steffen's December 1, 1983 charge of discrimination was filed and Meridian was not given clear notice that retaliation was an issue." (*Id.* (original emphasis).)

No judge in active service requested a vote on Steffen's Petition for Rehearing and Suggestion for Rehearing *In Banc*, and all of the judges on the original panel voted to deny rehearing. (Pet. App. C, pp. 68a-69a.) The court entered an order denying Steffen's Petition for Rehearing on January 18, 1989. (*Id.*)

SUMMARY OF ARGUMENT

Steffen's stated reasons for his Petition are insufficient to warrant review of the Seventh Circuit's decision. Steffen does not allege that the Seventh Circuit has decided a federal question in a way that conflicts with an applicable decision of this Court, nor does he allege that the Seventh Circuit's decision conflicts with the decision of another federal court of appeals or any other lower

court. Instead, through innuendo, Steffen attempts to create conflict. The arguments supporting his Petition are legally erroneous and suggest that his real complaint is nothing more than his dissatisfaction with the district court's and Court of Appeals' application of well-established legal principles to the particular facts of his case.

Steffen first contends that there is not a uniform test for determining whether allegations of a judicial complaint are within the scope of the EEOC charge. That contention ignores nineteen years of decisions in which courts consistently have relied upon a uniform standard in determining the scope of a subsequent civil action. A review of any of the scores of cases involving "scope" issues demonstrates that courts simply refer to alternate descriptions of the same test and that the underlying rationale and analysis are, indeed, identical. It is dissimilar *facts* that yield dissimilar results in these cases, not the lack of a uniform test. Consequently, Steffen's implication of conflict is meritless.

Second, Steffen implicitly argues that the court below improperly concluded that retaliation was not within the scope of his charge and claims that the court established "precedent for the proposition that a second charge specifically alleging retaliation is required to assert a claim for retaliation in a civil action." Those assertions are equally groundless. The court's decision does not require the filing of a second charge or the inclusion of a specific allegation of retaliation in each case. The court's determination that Steffen's judicial allegation of retaliation was outside the scope of his EEOC charge was based on the particular facts of this case where a second charge had been filed. The court fully considered those facts and correctly decided that Steffen's claim of retaliatory discharge was not within the scope of his EEOC charge, which was filed after the allegedly discriminatory discharge occurred.

Steffen's reasons for granting his Petition are nothing more than personal complaints as to the court's view of the facts and the application of well-established legal principles to those facts. His complaints are not sufficient to merit this Court's review.

REASONS FOR DENYING THE WRIT OF CERTIORARI

I. Lower Courts' "Scope Of The Charge" Test Is A Uniform Standard That Recognizes Statutory Procedural Requirements And Protects The Rights Of Laymen Initiating The Administrative Process

The scope of the charge standard that is applied by lower courts generally and by the district court and Court of Appeals in this matter is a uniform standard that takes into account this Court's caution to interpret liberally civil rights statutes so as to protect the rights of employees who may be the victims of unlawful employment discrimination. This Court has admonished courts to avoid creating additional procedural technicalities when interpreting civil rights statutes in which the administrative process is often initiated by "laymen, unassisted by trained lawyers." *Love v. Pullman Co.*, 404 U.S. 522, 527 (1972); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 397, *reh'g denied*, 456 U.S. 940 (1982) (cases involving timely charge issues). However, this Court has also advised that "experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law," *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980), and that "[p]rocedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants." *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 152, *reh'g denied*, 467 U.S. 1231 (1984).

Under the ADEA, one such procedural requirement is "[n]o civil action may be commenced by an individual . . . until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission." 29 U.S.C. § 626(d) (1982). Thus, a plaintiff is required to file a charge that encompasses the acts complained of as a prerequisite to filing a suit in federal court. The policy behind this requirement, which is similar to the timeliness requirement, is to (1) allow the agency an opportunity to investigate and conciliate the claims of discrimination and (2) give the employer timely notice of claims and promote the employer's good faith negotiations during conciliation. *Babrocky v. Jewel Food Co. and Retail Meatcutters Union*, 773 F.2d 857, 863 (7th Cir. 1985).

To accommodate the concern for "laymen" who are "'unassisted by trained lawyers," courts, including the Seventh Circuit, consistently have relaxed the requirement that a plaintiff include in his charge all alleged conduct. They have, instead, extended the scope of the complaint to include discriminatory matters that are like or reasonably related to the charge and grow out of such allegations or which can reasonably be expected to grow out of an investigation of the charge as well as matters actually investigated by the EEOC. *See, e.g., Babrocky*, 773 F.2d at 864; *Jenkins v. Blue Cross Mutual Hospital Ins., Inc.*, 538 F.2d 164, 167-68 (7th Cir.), *cert. denied*, 429 U.S. 986 (1976); *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455, 466 (5th Cir. 1970).[2]

---

[2] "The Seventh Circuit has indicated that the 'like or related' test is to be very liberally applied" and "has read the relatedness requirement very broadly . . . ." *McCray v. Standard Oil*, 76 F.R.D. 490, 497-98 (N.D. Ill. 1977) (*citing Jenkins* and *Sanchez*). The court's rule "seeks to insure that the EEOC's voluntary conciliation procedures will be invoked before a federal suit is filed" and "allows the scope of the judicial complaint to extend the scope of the EEOC investigation growing out of the charges." *Id.* at 497.

Virtually every circuit has employed a scope of the charge standard that avoids a requirement that a plaintiff file a charge spe-

Applying this uniform approach, courts first look to the actual investigation triggered by the EEOC charge to determine if the EEOC investigated an instance of alleged discrimination. In the absence of an actual investigation of a type of discrimination alleged in the judicial complaint, courts look to the facts alleged in the EEOC charge to determine if the facts describe the discrimination about which the employee complains in court. *See Smith v. Sentry Ins.*, 674 F.Supp. 1459, 1467-68 (N.D. Ga. 1987).

Steffen is unable to identify any manner in which the Seventh Circuit's application of this standard conflicts with applicable decisions of this Court. Without support, he asserts that the lower court's application of its scope of the charge test to the facts of this case undermines prior principles established by this Court.[3] His assertion is erroneous. Steffen fails to cite, and Meridian's research has not revealed, a single decision in which this Court has addressed the scope of the charge issue. Steffen baldly asserts that the Seventh Circuit's decision undermines the guiding principles announced in *Love*, 404 U.S. 522, and *Zipes*, 455 U.S. 385. That claim, however, is simply without merit. In reality, the Seventh Circuit's formulation is wholly consistent with the policy considerations announced in *Love* and *Zipes*. *See, e.g.*, Seventh Circuit decisions, *Babrocky*, 773 F.2d at 863-64, and *Jenkins*, 538 F.2d at 167-68, citing *Love* and *Zipes*.

Next, Steffen repeatedly intimates that there is a conflict among the courts regarding the test for determining whether a plaintiff's judicial complaint is within the

---

cifically and carefully articulating the employer's alleged discriminatory conduct. *Babrocky*, 773 F.2d at 864.

[3] Without discussion, Steffen also announces that the Seventh Circuit's decision undermines congressional policies, which policies he fails to identify. (Pet., p. 11.)

scope of his EEOC charge.[4] There is, however, no confusion or lack of uniformity in the tests applied by the courts. Even a cursory reading of the myriad of "scope" cases reveals that, notwithstanding which articulated form of the test (or combination of forms) is used, courts focus on the same policy considerations and look to the words of the charge and the EEOC's investigation.[5]

In *Sanchez*, the Fifth Circuit first announced the scope of the judicial complaint standard that has become the model for other courts. Responding to the question what standard should be used in measuring the proper scope of a judicial complaint, the court adopted the answer of one of its district courts: a judicial complaint "'may encompass any kind of discrimination like or related to allegations contained in the charge and growing out of such allegation during the pendency of the case before the Commission.'" *Sanchez*, 431 F.2d at 466 (*quoting King v. Georgia Power Co.*, 295 F.Supp. 943, 947 (N.D. Ga. 1968)). Then the court added, "*In other words*, the 'scope' of the judicial complaint is limited to the 'scope' of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." *Id.* at 466 (emphasis added). Thus, from the genesis of the "scope" test, the court articulated alternate characterizations of the *same* test.

---

[4] By failing to state that there is a conflict between the Seventh Circuit's decision and any other decision of a federal court of appeals, or any other lower court, Steffen implicitly acknowledges that a conflict regarding the "scope" test does not exist.

[5] Although Steffen asserts that "[a] review of recent federal court decisions illustrates few courts apply these different tests in a way which achieve[s] similar results," Steffen does not give a single example of confusing or non-uniform decisions that resulted from courts' application of the different characterizations of the scope of the charge test. (Pet., pp. 20-21.) The "ever-worsening 'scope of [the] charge' dilemma" to which Steffen urges this Court to turn its attention (Pet., p. 26) is imaginary. This manufactured dilemma is not substantiated by Steffen's Petition or by case law. The circuits are in accord on this issue. *Babrocky*, 773 F.2d at 864.

Subsequently, courts, including the Seventh Circuit, have interchanged the language used to describe the standard, but the policy considerations and the analyses have remained constant. *See, e.g.*, the following characterizations that have emanated from the Seventh Circuit: *Babrocky*, 773 F.2d at 864 ("All claims of discrimination are cognizable that are 'like or reasonably related to the allegations of the charge and growing out of such allegations.'"); *Hemmige v. Chicago Public Schools*, 786 F.2d 280, 283 (7th Cir. 1986) ("[T]he trial court recognized that the scope of the judicial complaint is not limited to the precise facts set out in the EEOC charge—but rather 'to the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination.'"); *Grimes v. Louisville and Nashville Railroad Co.*, 583 F.Supp. 642, 649 (S.D. Ind. 1984), *aff'd without opinion*, 767 F.2d 925 (7th Cir. 1985), *cert. denied*, 476 U.S. 1160, *reh'g denied*, 478 U.S. 1031 (1986) ("[T]he Court may exercise jurisdiction over like or related matters which might reasonably be expected to be subject to EEOC investigation growing out of the charge."). There is, however, no discord or confusion in the application of these various characterizations of the test. In fact, the *Babrocky* court emphasized that the circuits were "in accord with [the] analysis" of judicial complaints.[6] 773 F.2d at 864.

Steffen relies on *Reiter v. Center Consolidated School District No. 26-JT*, 618 F.Supp. 1458 (D. Colo. 1985), to bolster his argument that the tests for determining the scope of the charge are confusing and that there is a need for uniformity that must be addressed by this Court.

---

[6] The court cited decisions from the Third, Fourth, Fifth, Sixth, Eighth, Ninth and Eleventh Circuits including the Fifth Circuit's seminal *Sanchez* decision. Moreover, in stating its scope test, the court quoted *Danner v. Phillips Petroleum Co.*, 447 F.2d 159, 162 (5th Cir. 1971), *cert. denied*, 429 U.S. 986 (1976), a Fifth Circuit decision decided the year after *Sanchez*.

(Pet., pp. 19-20.) However, Judge Kane does not indicate that there is any confusion caused by the "various formulations." In fact, Judge Kane recognizes that

> [r]egardless of what formulation is employed, "the most important considerations are whether the defendant had sufficient notice from the administrative charge of the alleged kinds and areas of discrimination and whether the administrative agencies and employers involved had an opportunity to work on a conciliation agreement for voluntary compliance in the challenged areas."

Reiter, 618 F.Supp. at 1461 (citations omitted).

In determining whether Steffen's judicial complaint was within the scope of his EEOC charge, the Seventh Circuit relied on precisely the same standard as other courts, employed the same considerations recognized by Judge Kane, and correctly concluded, as did the district court, that, under the circumstances in this case, Steffen was barred from maintaining a retaliatory discharge action.

II. The Court Below Correctly Applied Well-Established Legal Principles To The Facts

A. The Court Below Properly Concluded That Retaliation Was Not Within The Scope Of Steffen's EEOC Charge

Steffen decries the "tragic consequence[s]" that befall American workers whose significant statutory rights are jeopardized when they rely on "non-attorneys" to "advise them regarding their rights." (Pet., pp. 11-13.) He urges this Court's intervention on behalf of those "victims of various forms of job discrimination" who are penalized by a "technical deficiency" in their administrative charges because workers are "often unable to fully articulate [their] grievances." (Pet. pp. 12-13.)

Significantly, however, these concerns for the prototype worker for whom courts have demonstrated some willing-

ness to relax procedural requirements are not present here. Steffen is not a proper petitioner to invoke indulgence and liberality for the unschooled, inarticulate layman, unfamiliar with administrative procedures and the law. *See Jiron v. Sperry Rand Corp.*, 423 F.Supp. 155, 160 (D. Utah 1975). Steffen did not lose his day in court because of a "technical error" in his EEOC charge. *Cf. Sanchez*, 431 F.2d 455 (where the plaintiff failed to check the appropriate box on her original charge of discrimination).

Steffen, a high-level executive, retained and consulted an attorney within four weeks after he believed Meridian initially discriminated against him. (Pet. App. F, pp. 86a, 89a.) His attorney advised him of his rights and remedies under the ADEA. (Pet. App. F, pp. 89a-90a, 99a.) Steffen, subsequently, visited the EEOC to complain about his allegedly discriminatory demotion and completed an Intake Questionnaire on May 13, 1983, specifically stating he was represented by an attorney. (Pet. App. F, pp. 90a-92a; Pet. App. G, p. 105a.) The attorney continued to represent Steffen in attempts to resolve the dispute about Steffen's change of duties and responsibilities. (Pet. App. F, pp. 89a-90a, 94a-100a.) After Steffen was discharged in November 1983, he filed a second charge on December 1, 1983, alleging that he had been terminated because of his age. (Pet. App. H, pp. 106a-111a.) [7]

More than one year later, on December 27, 1984, when Steffen filed his judicial complaint, for the first time he alleged that his discharge was retaliatory. In response to Meridian's Motion for Partial Summary Judgment, the court reviewed the factual allegations of Steffen's EEOC charge to determine whether his retaliation claims

---

[7] Steffen's attorney died on or about July 1, 1984, more than seven months after Steffen filed his second EEOC charge. (Pet. App. F, p. 89a.) He subsequently retained new counsel.

were within the charge's scope. His charge does not refer to his previous charge of age discrimination or to his attorney's prior attempts to resolve his claim of discriminatory demotion. (Pet. App. H, pp. 108a-110a.) His allegations that he was terminated, demoted and denied profit sharing benefits were grounded only on his belief that *age* affected the decisions.[8] Absent some reference in the charge to the fact that Steffen had previously complained of discrimination, it is impossible for anyone—a layman, an EEOC officer or an employment lawyer—to infer that Steffen's discharge was the result of his earlier opposing Meridian's decisions or exercising his statutory rights.[9] *Cf. Jenkins*, 538 F.2d at 168-69 (where the factual statements raised claims of both sex and race discrimination).

Moreover, the evidence shows that nothing outside the charge alerted the EEOC investigator, who would have

---

[8] The court noted that Steffen had checked the box marked "other," "specifically" had written in "age," and had made "no mention of retaliation or any other words to that effect." (Pet. App. A, pp. 48a-49a).

[9] Before the Court of Appeals, it was argued that Steffen's assertion that the reason for his termination was "pretext" raises the issue of retaliation. The court below concluded, "This contention misses the mark by a wide margin." (Pet. App. A, p. 49a.) Steffen's "pretext" language is directly related to Steffen's statement that he was the "oldest employee" at Meridian. While it alerts the EEOC to Steffen's belief that Meridian's stated reason for his termination was a pretext for age discrimination, it "cannot reasonably be expected to alert the [EEOC] to the separate and distinct charge of retaliation." *Meyer v. Macmillan Publishing Co.*, 85 F.R.D. 149, 152 (S.D.N.Y. 1980); *see also Ekanem v. Health and Hospital Corp.*, 724 F.2d 563, 573 (7th Cir. 1983), *cert. denied*, 469 U.S. 821 (1984) (original emphasis) ("A charge that a given wage is too low because of unlawful *retaliation* is not the same as a charge that a given wage is too low because of unlawful *race discrimination*."); *Tucker v. Harley Davidson Motor Co.*, 454 F.Supp. 738, 742 (E.D. Wis. 1978) (holding that an allegation of discriminatory dismissal does not fairly encompass the allegations of retaliatory discharge).

had access to the file from Steffen's first charge, to a claim of retaliation. The EEOC's Log of Investigative Settlement Actions shows that after the investigator talked with Steffen and Meridian's counsel about the case, he continued his investigation by preparing and forwarding to Meridian a "Request for Information." (Record on Appeal, Doc. 08, attached Ex. 1, p. 115.) That Request, which included fourteen inquiries, did not seek any information about the informal conciliation, Steffen's prior representation by counsel or Steffen's complaints about his demotion. (Record on Appeal, Doc. 05, attached Ex. 2, pp. 38-39.) Because the EEOC did not have notice of a retaliation claim, Meridian did not have notice and was not given an opportunity to conciliate a retaliation charge. *See Jensen v. Board of County Commissioners for Sedgwick County*, 636 F.Supp. 293, 300 (D. Kan. 1986) (Where the plaintiff, like Steffen, filed a charge of discriminatory discharge but did not allege retaliation, the court held that the retaliation claim "is separate and distinct from a discrimination claim, and even under a liberal analysis, it is not 'reasonably related to the charges alleged.'").

It is upon these facts that the court correctly concluded that Steffen's claim of retaliatory discharge was not within the scope of his charge.

Steffen's failure to include the facts supporting a claim of retaliation in his charge is inexcusable. As the Seventh Circuit concluded, at the time he filed his December 1, 1983 charge, all the facts on which he based his civil action were known, but he did not allege retaliation or allege facts from which retaliation could reasonably be inferred. The district court emphasized the same fact when it distinguished Steffen's case from cases in which retaliatory conduct occurred after, rather than before, the filing of a charge. (Pet. App. D, pp. 78a-81a.)

Relying upon *Smith v. Sentry Ins.*, 674 F. Supp. 1459 (N.D. Ga. 1987), Steffen suggests that an EEOC in-

vestigator would have unavoidably concluded that his discharge might be in retaliation for the assertion of his ADEA rights. (Pet., p. 18.) That suggestion is without merit. First, in this case the investigator did not reach such an unavoidable conclusion because the investigator did not investigate or attempt to conciliate a claim of retaliatory discharge. (Record on Appeal, Doc. 05, attached Ex. 2, pp. 38-39 (EEOC's Request for Information); Doc. 08, attached Ex. 1, p. 115 (EEOC Log of Investigative Settlement Actions).) Second, Smith's case is distinguishable from Steffen's.

In *Smith*, the court held that the plaintiff's claim of retaliatory discharge was encompassed in his EEOC charge and in the investigation reasonably growing out of that charge. There was no evidence of the actual EEOC investigation in the record, so the court turned to the charge itself. Although the charge did not describe Smith's termination in terms of retaliatory discharge, Smith stated in his Intake Questionnaire that the discriminatory actions against him were the result of "*retaliatory* appraisal," "discrimination [sic] promotion" and "discriminatory/*retaliatory* termination and possibly other actions." *Smith*, 674 F. Supp. at 1464 (emphasis added). Thus, unlike Steffen, Smith alerted the EEOC that he believed his termination was the result of his prior opposition to what he believed were his employer's unlawful employment practices. *See also Johnson v. General Electric*, 840 F.2d 132, 139 (1st Cir. 1988) (holding that a retaliation claim "could not have been expected to be part of the scope of the EEOC's investigation growing out of appellant's earlier complaints, because plaintiff has not alleged that he even informed the EEOC of the alleged retaliation"); *Meyer v. Macmillan Publishing Co.*, 85 F.R.D. at 151 ("For the EEOC reasonably to be expected to investigate the retaliation charge, that agency should have been alerted to the claim."). Here, the EEOC was not alerted to a claim of retaliatory dis-

charge because Steffen did not so much as hint that he believed his discharge was based on retaliatory motive.[10]

A court should not require "an exact correspondence between the words of the EEOC charge and the judicial complaint." *Babrocky*, 773 F.2d at 865-66.[11] However, here, Steffen filed his charge *after* the alleged retaliation occurred; there is no correspondence between the two; and there was no investigation of retaliation. Thus, the Seventh Circuit correctly held that Steffen could not "inject[] an entirely new theory of liability into the case alleging unlawful activity of a much different nature than the age discrimination alleged in the charge." (Pet. App. A, p. 50a.) A contrary ruling would emasculate the dual purposes of putting the employer on notice of the allegations and of allowing the agency to attempt an informal conciliation of the charges.[12] *See Jiron*, 423 F.Supp. at 159.

---

[10] Steffen concludes his Petition pleading, "How could [I], [my] EEOC counselor or anyone have identified whether [my] termination by Meridian was more age discrimination or in retaliation for the assertion of [my] ADEA rights?". (Pet., p. 26.) That rhetorical question is best answered by a review of Steffen's charge which demonstrates that Steffen could and, in fact, did specifically identify that he believed he was discharged *only* because of his age. After stating, "I feel that I have been discriminated against because of my age," Steffen added, "At the time of my termination I was the oldest employee in the Company." (Pet. App. H, pp. 109a-110a.) Retaliation did not become an alleged motive until more than one year later after a second counsel, who prepared the judicial complaint, became involved.

[11] *See also Sanchez*, 431 F.2d at 465 ("[T]he specific words of the charge of discrimination need not presage with literary exactitude the judicial pleadings which may follow.").

[12] Steffen argued in the court below that nothing different would have occurred during the conciliation if retaliation had been specifically alleged. That argument is unsound. An employer charged with discrimination *and* retaliation is in a totally different conciliation posture than one charged solely with discriminatory conduct. *Cf. EEOC v. St. Anne's Hospital of Chicago*, 664 F.2d 128, 131

B. The Decision Of The Court Below Does Not Require The Filing Of A Second Charge That Specifically Alleges Retaliation

Finally, Steffen complains that the lower court's decision will require a worker who files an administrative charge and, subsequently, suffers adverse employment actions to file a second charge "specifically articulating the possibility" that the subsequent actions were retaliatory in nature in order to bring a civil action based on retaliation. (Pet., p. 25; *see also* pp. 11-13, 23.) No fair reading of the court's decision supports Steffen's contention. Even Steffen acknowledges that "[t]he language of the decision rejects this additional charge requirement," yet he insists that the "holding establishes legal precedent for such a requirement." (Pet., p. 23.) The court's holding that retaliation is not within the scope of the charge clearly was based on the specific facts of this case in which a second charge had been filed. Moreover, here, the alleged retaliation occurred prior to Steffen's filing his second charge of discrimination, which charge referred only to age discrimination as a basis for his discharge and did not suggest in any fashion that his discharge was motivated by retaliation.

It is true that courts frequently permit plaintiffs to seek relief for acts of retaliation even if they are not listed in an initial charge when the act of retaliation occurs after the EEOC charge was being considered and the employee does not file a second charge. *See Ross v. Kansas Commission on Civil Rights*, 45 Fair Empl. Prac. Cas. 1472, 1475 (D. Kan. 1982). Courts reason that requiring a plaintiff to file a second charge would "place a needless procedural barrier against claimants under Title VII and that eliminating such a barrier will dis-

---

(7th Cir. 1981) (where the court rejected the defendant's claim that it was denied an opportunity to conciliate because the defendant, unlike Meridian, had been "informed prior to the reasonable cause determination that retaliatory discharge had become the issue").

courage employers from attempting to deter employees from exercising their Title VII rights." *Id.* at 1475; *see also Gupta v. East Texas State University*, 654 F.2d 411, 414 (5th Cir. 1981) ("[I]t is unnecessary for a plaintiff to exhaust administrative remedies prior to urging a retaliation claim growing out of an earlier charge" because "a double filing . . . would serve no purpose except to create additional procedural technicalities when a single filing would comply with the intent of Title VII."); *EEOC v. Reichhold Chemicals*, 700 F.Supp. 524, 527 (N.D. Fla. 1988) (extending the *Gupta* rationale to a case in which the EEOC was the plaintiff); *Grimes*, 583 F.Supp. at 649. As previously discussed, both the district court and the Court of Appeals emphasized that Steffen, who filed his charge *after* the alleged retaliation occurred, did not face such a procedural "barrier" or "technicality." (Pet. App. A, pp. 51a-52a n.2; Pet. App. D, pp. 78a-81a.) Steffen filed a second charge *after* the alleged retaliation, yet his detailed charge is devoid of any facts from which to infer he believed that retaliatory motive was the basis of his discharge.

Steffen is certainly not a charging party "so unlettered and inarticulate that he does not fully comprehend the distinction between an act motivated by [age discrimination] and an identical act motivated by [retaliation]." *Sanchez*, 431 F.2d at 462-63. It is, therefore, fair to conclude that Steffen believed his discharge was solely based on age. It is also fair to conclude that retaliatory motive was an afterthought that sprang forth when Steffen obtained new counsel after the death of his initial counsel in July 1984.

Here, the procedural requirements for gaining access to the federal courts should not be disregarded. Steffen's case does not warrant further relaxation of the statutory procedural requirements.

III. This Case Does Not Merit The Court's Review

Steffen has not presented reasons of the character that warrant granting a Petition for a Writ of Certiorari. Steffen has not cited a single applicable decision of this Court with which the Seventh Circuit's decision conflicts. Steffen has failed to establish the existence of a conflict among the circuits with regard to the standard for determining whether a civil action based on retaliation is within the scope of an EEOC charge. He simply has presented to this Court a single plaintiff who is dissatisfied with the court's application of well-established legal principles to the particular facts of his case. Steffen's dissatisfaction is not a cert-worthy issue, and his case does not merit this Court's review.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

C. Wendell Martin
Martin Wade Hartley & Hollingsworth
8590 North Meridian Street
Indianapolis, Indiana 46208
(317) 924-6700

Susan Bowron-White
Meridian Life Insurance Company
2955 North Meridian Street
Post Office Box 1980
Indianapolis, Indiana 46206
(317) 927-8213

John T. Neighbours *
Mitzi Harris Martin
Baker & Daniels
Suite 2700
300 North Meridian Street
Indianapolis, Indiana 46204
(317) 237-0300

* Counsel of Record

Counsel for Respondents

May 26, 1989